

CITY OF CARLSBAD - AGENDA BILL

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AB#	18,659	Election Code Section 9212 Report on	DEPT. HEAD	V.
MTG.	7/18/06	Citizen Initiative Scheduled for	CITY ATTY.	D
DEPT.	CA	November 2006 Municipal Election	CITY MGR. <	\$2

RECOMMENDED ACTION:

Accept the Elections Code Section 9212 Report on the "Save the Strawberry and Flower Growing Fields Act of 2006" Initiative and place the Initiative on the ballot for the November, 2006 general election.

ITEM EXPLANATION:

On June 20, 2006, the City Council ordered the preparation of a report, under Section 9212 of the Elections Code, to analyze various impacts of the Initiative entitled "Save the Strawberry and Flower Growing Fields Act of 2006." The City retained the services of the law firm of McDougal, Love, Eckis, Smith, Boehmer and Foley and the economic consulting firm of Rosenow-Spevacek Group to assist in the preparation of the Report. The Report is attached as Exhibit 1 to this Agenda Bill.

The Report analyzes legal, procedural, land use, fiscal and other impacts associated with the Initiative should it be approved. The conclusion of the Report is that these impacts are substantial in nature and they could have significant fiscal and administrative implications for the City. Therefore, the Report recommends that the City Council not adopt the Initiative by Ordinance at this time and, instead, place it on the ballot for the November election and let the voters decide whether to approve it.

FISCAL IMPACT:

There is no fiscal impact to the City of accepting the Section 9212 Report. Fiscal impacts associated with the Initiative and its implementation are contained in the 9212 Report.

ENVIRONMENTAL IMPACT:

The Section 9212 Report does not qualify as a project under Section 15378 of the California Environmental Quality Act (CEQA) and, therefore, environmental review is not required. CEQA specifically exempts citizen-sponsored initiatives from environmental review.

EXHIBITS:

1. Elections Code Section 9212 Report

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FOR CITY CLERKS USE ONLY.							
COUNCIL ACTION:	APPROVED		CONTINUED TO DATE SPECIFIC				
<u>[</u>	DENIED		CONTINUED TO DATE UNKNOWN				
	CONTINUED		RETURNED TO STAFF				
1	WITHDRAWN		OTHER - SEE MINUTES				
	AMENDED		Council Accepted the Report.				

Exhibit 1

ELECTIONS CODE SECTION 9212 REPORT ANALYSIS OF THE SAVE THE STRAWBERRY AND FLOWER GROWING FIELDS ACT OF 2006

The purpose of this report is to respond to the Council's request to study various impacts of the "Save the Strawberry and Flower Growing Fields Act of 2006" (hereinafter referred to as "Strawberry Fields Initiative" or "Initiative"). This 9212 report was ordered by the City Council at its meeting of June 20, 2006. This report must be submitted to the Council no later than 30 days after the election official certifies to the legislative body the sufficiency of the petition. This certification was accomplished on June 20th.

This Report will follow the format set out in Section 9212. There are seven specific requirements for a 9212 Report and an optional category for additional information requested by the City Council. In its referral to City staff, the Council only sought information required to be included in the 9212 Report and did not seek any other information. This Report will include attachments from various sources. The primary source will be a report by the Rosenow-Spevacek Group ("RSG") regarding various fiscal impacts. It also discusses certain legal impacts of the Initiative that were discussed by the Council-appointed Citizen's Committee.

¹ Election Code 9212 states as follows: 9212. (a) During the circulation of the petition, or before taking either action described in subdivisions (a) and (b) of Section 9214, or Section 9215, the legislative body may refer the proposed Initiative Initiative to any city agency or agencies for a report on any or all of the following: (1) Its fiscal impact. (2) Its effect on the internal consistency of the city's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on city actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code. (3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs. (4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the linitiative would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses. (5) Its impact on the community's ability to attract and retain business and employment. (6) Its impact on the uses of vacant parcels of land. (7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization. (8) Any other matters the legislative body requests to be in the report. (b) The report shall be presented to the legislative body within the time prescribed by the legislative body, but no later than 30 days after the elections official certifies to the legislative body the sufficiency of the petition.

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This report does not discuss the City's Initiative or any other Initiative currently being contemplated or circulated. The Initiative under consideration is attached to this report as Attachment "1".

I. Procedural Initiative Concerns

A. General Initiative Issues

The Initiative power for cities is found in the Constitution. (Cal. Const. Art. II, Section 11.) It is a power reserved by the people rather than one granted by the Constitution. This reserved power places an Initiative's proponents on an equal footing with the legislative body (City Council). With this right comes responsibility. Initiatives are subject to the same rules and conditions applicable to city councils when they adopt laws, excluding certain public hearing and procedural requirements. As a city council must comply with statutory requirements, a citizensponsored Initiative must also generally meet statutory standards. (*Creighton v. Reviczky* (1985) 171 Cal. App. 3d 1225.)

Because this Initiative regulates property in the Coastal zone, it is required to be consistent with the California Coastal Act. (Public Resources Code Section 30000 et. seq.) Each coastal city must prepare a local coastal program. The General Plan sections being amended are part of the Land Use Plan ("LUP") of the Carlsbad Local Coastal Program ("LCP"). (Public Resources Code Section 30511.) These portions of the LUP may be subject to the Initiative process. (DeVita v. County of Napa (1995) 9 cal.4th 763; Yost v. Thomas (1984) 36 Cal.3d 561.) However, as an amendment to the LCP and its implementing ordinances (LUP), the amendment takes effect only upon certification by the Coastal Commission. (Public Resources Code Section 30514(a); Yost v. Thomas (1984) 36 Cal.3d 561; 70 Cal. Op. Atty. Gen. 220 (1987).)

B. Issues Specific to the Strawberry Fields Initiative

Since this Initiative is primarily a General Plan Amendment, it must follow general rules applicable to Land Use Initiatives. Land Use Initiatives are subject to certain statutory and judicially interpreted rules of construction. They must be:

- 1. Consistent with the General Plan;
- 2. If they amend the General Plan, they must not create an internal inconsistency within the various elements of the General Plan;
- 3. They must not preempt State regulatory authority held by the Coastal Commission, Public Utilities Commission, California Energy Commission or other applicable state bodies²;

² The State Agencies with regulatory authority would include the California Coastal Commission (Coastal Act), California Energy Commission (Power Plant Siting and Regulatory Issues), Public Utilities Commission (Utility Company regulations, including use of right-of-ways), Department of Pesticide Regulation (Agricultural use of Pesticides), Department of Fish & Game (Plant and wildlife issues) and the San Diego Regional Water Quality Control Board (Stormwater runoff and pollution control). Other agencies may have regulatory authority, but these Agencies are the ones that would be the most directly involved.

- 4. They cannot direct future legislative discretion of the City Council; and
- 5. They must comply with many of the same rules governing City Council except basic procedural rules applicable only in a legislative setting.

This Initiative can only be implemented to the extent they meet the requirements listed above.

C. Analysis of Procedural Sections of the Strawberry Fields Initiative

This office has reviewed various provisions of the Strawberry Fields Initiative that has qualified for the ballot. This Initiative contains many of the legal issues common to typical Land Use Initiative.

1. Effective Date of the Strawberry Fields Initiative

Under Section 4 of the Strawberry Fields Initiative, the effective date is established as January 1 of the year following adoption by the voters. Under 9217, the effective date of an Initiative is ten days after the City Council certifies the result of the election. Section 4 of the Initiative states as follows:

If a majority of the voters voting on a proposed ordinance vote in its favor, the ordinance shall become a valid and binding ordinance of the city. The ordinance shall be considered as adopted upon the date that the vote is declared by the legislative body, and shall go into effect 10 days after that date. No ordinance that is either proposed by Initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance.

The effective date of the Ordinance conflicts with the effective date for local municipal ballot Initiatives established by the Legislature. The date listed in the elections code would control. In addition to establishing a general effective date, the Initiative also attempts to be applied retroactively to December 19, 2005.

This retroactive provision has two legal impacts. First, it attempts to prohibit any land use amendment after December 19, 2005. It also directs the City to amend the General Plan and related plans and ordinances to make them consistent with this Initiative.

The retroactive nature of this Initiative creates legal issues that will have to be considered by the City Council if the voters approve it. The retroactive provisions may affect vested rights or invalidate previously adopted Council approvals. This issue is included in this report to better inform the Council and the Public prior to either adoption by the Council or placement on the ballot to give the landowners and the public an understanding of the impact of

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the Initiative on land use approvals that are or will be approved between December 19, 2005 and the potential effective date of the Initiative.

2. Council Amendments in the Strawberry Fields Initiative

Under Section Five, the Strawberry Fields Initiative states as follows:

Permits amendment of this Initiative by the City Council without a vote of the people in certain circumstances to comply with any state mandated programs, that results in a violation of the Constitutional Rights of any person or entity or to disturb a vested right under state or local law

The City Council can "amend" the Initiative for three reasons; "state mandates," "deprivation of Constitutional rights" and to preserve "vested rights". The amendment scenario will more than likely come up on a project-by-project basis where application of the Initiative violates one of these conditions.

a. State Mandate Issues.

The "state mandate" issue will require monitoring of two primary areas of regulation, housing law and environmental law. The State is currently in the midst of a housing crisis and legislation to address this issue is a regular issue in Sacramento. The impacts of fair share housing laws and possible expansion of developer-driven incentive programs are the most likely future legislative impacts that may affect this Initiative's goal of a permanent agricultural zone and the prohibition of housing in this area.

b. Constitutional Issues Requiring Amendments.

The Strawberry Fields Initiative allows Council amendments to prevent deprivations of Constitutional rights. These issues usually come up on an *ad hoc* basis with the filing of a meaningful application for a development permit. (*MacDonald, Sommer & Frates v. County of Yolo* (1986) 477 U.S. 340, 348; *Williamson County v. Hamilton Bank* (1985) 473 U.S. 172, 186, 190 n.11; *Southern Pacific Transportation Company v. City of Los Angeles* (9th Cir. 1990) 922 F.2d 498; *Shelter Creek Development Corp. v. City of Oxnard* (9th Cir. 1988) 838 F2d 375, 377; *Herrington v. Sonoma County* (9th Cir. 1987) 834 F.2d 1288, 1494.) The City Council will be required to make a determination whether a "taking" has occurred under the Fifth Amendment to the United States Constitution and under the California Constitution if it denies the project proposal.

The standard that the courts use is not easily transferred to a public hearing setting before the City Council. It is likely that the main argument for any non-agricultural proposal will be that the property values have diminished to such an extent that there is no longer a

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reasonable use left for the property without the development proposal. The three factors that the courts generally look at on a case-by-case basis are:

- 1. The economic impact of the regulation;
- 2. The owners' reasonable investment backed expectations; and
- 3. The character of the government action.

Of these three factors, economic impact is the most important. (Lucas v. South Carolina Coastal Council (1992) 505 U.S. 1003, 1015, 1027; Keystone Bituminous Coal Ass'n. v. DeBenedictis (1987) 480 U.S. 470, 485.) In Keystone, the Court looked at the value that was left after the regulation.

The Strawberry Fields Initiative leaves the decision of whether a Constitutional deprivation occurs to the City Council. The Council would have to expand its normal level of land use review to include a review of economic factors. In addition to reviewing the wisdom of the development from a public policy perspective, the City Council would have to determine whether the Initiative deprives the landowner of "economically viable use."

The City Council would need to do an economic analysis of the proposal to determine "economic viability." This would necessitate the hiring of experts to assist staff in evaluating a proposal and the impact of the Initiative on the parcel's remaining viability if the proposal is rejected. This would turn the City Council into a quasi-judicial body weighing evidence of a Constitutional deprivation. Staff information provided to the Council at the hearing regarding financial factors would be absolutely crucial to building a record regardless of the result.

The City Council will have to weigh evidence, as a Court would normally do, to determine if the Constitutional standard is met. If the City Council approves the development proposal, a citizen's suit to overturn the decision would, if successful, possibly result in the award of attorney's fees. (Cal. Code of Civil Procedure Section 1021.5.) If the landowner succeeds in overturning a denial of the proposal, the landowner could receive attorney's fees and damages for the loss in value. (42 United States Code Section 1988; *Agins v. City of Tiburon* (1980) 447 U.S. 225; *Penn. Cent. Transp. Co. v. New York City (1978) 438 U.S. 104.*)

The City Council may wish to consider several options to determine how to handle these issues, assuming the Initiative is approved. One step may be to set up a special public hearing process to take into account the technical factors that need to be considered. This process could include the adoption of an ordinance that sets up a procedure by which the Council would hear the matter. Testimony could be taken from experts for the landowner, city staff and any other interested group prior to general public testimony. Specific findings could be established that mirror the Constitutional standards and the Council could set financial thresholds ahead of time (*i.e.* a range of the level of diminution in value required to allow development for non-agricultural enterprises) to give all parties foreknowledge of the standards they would have to meet. The Council may also want to consider hiring a Special Master (*i.e.* a retired federal

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judge) to make a recommendation to the Council after conducting an investigation on any application.

c. Vested Rights

The "vested rights" exception under state or local law would entail the City Council implementing the common law and statutory standards regarding the application of new rules. This provision would implement two state "vested rights" laws, vesting tentative subdivision maps (Government Code Sections 66498.1-66498.9) and development agreements Government Code Sections 65864-65869). There are also common law rules regarding "vested rights." (Avco Community Developers, Inc. v. South Coast Reg'l. Comm. (1976) 17 Cal.3d 785, 791.) The common law rules require the landowner to proceed with a project where they have "performed substantial work and incurred substantial liabilities in good faith reliance" on a validly issued permit. (Id.)

B. Federal Voting Rights Issues

The Strawberry Fields Initiative has only been circulated in the English language. This raises questions about the validity of the Initiative under the Federal Voting Rights Act of 1965. (42 United States Code Sections 1973 et. seq.) Currently, the County of San Diego is subject to a Consent Decree and a voluntary agreement, which imposes certain ballot language requirements within the County. This includes a Spanish language requirement on "voting materials." There are two questions that need to be answered. First, is this requirement applicable to the City of Carlsbad? Second, does it preclude the circulation of a local citizen's Initiative?

Under regulations adopted by the United States Department of Justice, the coverage of the provisions of the Voting Rights Act extend to Cities within a County subject to Voting Rights requirements. Where a political subdivision (e.g., a county) is determined to be subject to certain sections in the Act, all political units that hold elections within that political subdivision (e.g., cities, school districts) are subject to the same requirements as the political subdivision. (28 Code of Federal Regulations Chapter 1, Part 55.9 (July 1, 1999 Edition))

This section would seem to require application of the Voting Rights Spanish language provisions to the City through the County. Under a recent decision, the County Registrar of voters advised Cities in San Diego County of their potential obligations under the Voting Rights Act. Once this issue came to the attention of the Carlsbad City Attorney, the concern was passed along to the circulators of the first Initiative during its circulation period.

This issue arose based on a decision of a three-judge panel of the Federal Ninth Circuit Court of Appeals. (*Padilla v. Lever* (9th Cir. 2005) 429 F.3d 910, withdrawn No. 03-56259, April 28, 2006.) This decision, subsequently withdrawn, applied a translation requirement to the circulation of a recall petition. The recall petition was considered a "voting material" subject to the Voting Rights Act translation requirements. Since recall petitions do not require City review

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prior to circulation as an Initiative petition does, the application of the *Padilla* decision would certainly follow. (9203.)

With the withdrawal of the *Padilla* opinion, the Ninth Circuit will hear the issue *en banc*, before a full panel of judges. Until a decision is reached, the law is in a state of flux. Case law from other Federal Judicial Circuits sheds some light on the subject, but does not definitively answer the question of the application to this Initiative.

The 10th and 11th Federal Circuit Courts have both ruled that "other voting materials or information relating to the electoral process" does not include Initiative petitions. (42 United States Code Section 1973aa-1a(c) (Section 203); *Montero v. Meyer* (10th Cir. 1988) 861 F.2d 603; *Delgado v. Smith* (11th Cir. 1988) 861 F.2d 1489.) Ultimately, the Ninth Circuit will decide if the language of Section 203 of the Voting Rights Acts extends to this Initiative. When the *en banc* panel issues its decision, it may give some guidance to application of this requirement for the jurisdictions within the Ninth Circuit.

II. Fiscal Impact

The City has retained RSG to study the fiscal impact analysis of the Initiative. This analysis is attached to this Report as Attachment 2. Overall, the Report focuses on those issues which can be quantified given the time allotted to perform a comprehensive study of this magnitude.

One of the main problems of this analysis is accumulating data to determine the long-term fiscal implications of the permanent placement of the properties in question into open space and coastal agricultural lands zoning. For the 45-acre parcel, referenced herein, that is now designated travel/recreational commercial, the Report is able to do a more traditional analysis of economic impact of this change in regulation. Much of the permanent agricultural designations are harder to quantify. Much of the analysis is dependant upon the takings analysis listed in Section I C.(2)(b) listed above. The City Council will have to make an *ad hoc* determination basis in the same manner as a court would make such a determination in an inverse condemnation case.

III. Land Use Implications

Currently, the General Plan intends to have a natural urbanization process take place. As an example, the Land Use Element discusses the agricultural transition as follows:

<u>5. Agriculture.</u> Agriculture is an important resource in Carlsbad. The City's agricultural policies are intended to support agricultural activities while planning for the future transition of the land to more urban uses consistent with the policies of the General Plan and the Carlsbad Local Coastal Program (LCP).

The City's LCP protects agricultural lands from the premature conversion to more urban land uses by establishing programs which require mitigation for conversion of agricultural property to urban uses. It also has established methods to benefit agriculture in the community by providing financial assistance through cash programs.

While the City encourages agriculture, it recognizes the potential problems associated with agricultural land use. For example, to prevent the destruction of sensitive wild and archeological resources, clearing and grubbing of natural areas for agriculture requires a permit and environmental review. Also, the City encourages conservation techniques in agricultural activities to reduce soil erosion and water usage. (Carlsbad General Plan, Land Use Element, II(D)(5), Amended September 13, 2005.)

The Land Use Plans of the City, within the Coastal Zone, must be consistent with the Coastal Act. The Coastal Act includes a priority for visitor-serving uses close to the coast. (Public Resources Code Section 30255.) This requirement states as follows:

Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

Without Coastal Commission approval, the portions of an Initiative inconsistent with the LCP will not take effect. The Commission could prevent implementation of those portions of the covered properties that are inconsistent with the LCP/LUP. The Initiative does not amend the Carlsbad Local Coastal Program.

A. Major Land Use Implications of Proposed Initiative

- 1. Establishes agriculture as a more long-term, permanent land use in the city rather than an interim, temporary use.
- 2. Creates a new category of agricultural use entitled "coastal agriculture" and identifies the strawberry and flower fields areas of the city as part of this category.
- 3. Puts the burden on the city to ensure that these areas remain in agricultural production. This implication is addressed in greater detail in the RSG fiscal impact analysis attached to this Report.
- 4. Identifies these areas as Category 1 priority open space uses.
- 5. Changes the land use designation of the 45-acre portion of the area located at the northeast corner of I-5 and Cannon Road from Travel/Recreation (TR) Commercial to Open Space (OS) and identifies it as part of the coastal agriculture land use category.

B. Property Descriptions and Maps Included in the Proposed Initiative

The proposed Initiative includes property descriptions and maps which contain some inconsistencies. These inconsistencies include the following:

- 1. The City's general plan maps that were included in the Initiative are not assessor-parcel based. The description of assessor parcels in the Initiative does not accurately correspond with all the open space boundaries shown on the maps contained in the Initiative. Refer to GIS Map #1, Attachment "3" (All GIS Maps referred to herein are included in Attachment "3").
- 2. GIS Map #2 more accurately reflects the maps contained in the Initiative and the boundaries of open space as shown on the city's official copy of the General Plan Land Use and Open Space Maps.
- 3. Exhibit D map in the Initiative shows the boundaries of the proposed Open Space Coastal Agriculture and contains properties that ares not part of any of the assessors parcels listed in the Initiative. The property is part of Assessor's Parcel #208-020-44 which Kelly Ranch deeded to the State of California Department of Fish and Game. The other property in question is Assessor's Parcel No. 208-186-05 which is occupied by the Agua Hedionda Lagoon Foundation's Nature Center. Exhibit D map also excludes/does not show some open space property that is part of one of the assessor parcels described in the Initiative (Assessor's Parcel #211-010-31). It is not known whether the intent of the Initiative wa to include or not include these properties, and whether it is the intent of the Initiative to promote agricultural use on these properties. Refer to GIS Map#2.
- 4. Section 3.4 of the Initiative incorrectly refers to Sections 3.6 and 3.11 of the Initiative as where the assessor parcels affected by the Initiative are identified. The correct sections are Sections 3.8 and 3.13. This mistake is made again in Section 3.14 of the Initiative.
- 5. Two of the assessor parcels identified in the Initiative (portions of Assessor's Parcels #211-01-24 and 31) and property shown on the exhibit maps contain areas that are identified in the city's Habitat Management Plan as hardline preserve areas which are required to be conserved in their natural state. It is not known whether the intent of the Initiative is to promote agricultural uses in these natural habitat areas.

Although these map and property description inconsistencies are not considered "fatal flaws", they will lead to some confusion to the public and implementing problems for the City if the proposed Initiative is approved. Also attached to this Report are GIS Maps #3 and #4 (Attachment "3"), that overlay the boundaries of the maps contained in the Initiative on the city's Zoning Map and the Local Coastal Plan Land Use Map.

C. Existing General Plan, Local Coastal Plan Land Use and Zoning Designations

The existing General Plan, Local Coastal Plan and Zoning Designations for the properties identified in the proposed Initiative and shown on the Initiative exhibit maps are as follows:

Assessor's Parcel #211-022-21
 General Plan – Open Space (OS)
 Local Coastal Plan-Open Space (OS)
 Zoning-Open Space (OS)
 Carlsbad Ranch Specific Plan-Open Space (OS)

Assessor's Parcel #211-023-11
 General Plan – Open Space (OS)
 Local Coastal Plan-Open Space (OS)
 Zoning-Open Space (OS)
 Carlsbad Ranch Specific Plan-Open

3. Assessor's Parcel #211-023-13
General Plan – Open Space (OS)
Local Coastal Plan-Open Space (OS)
Zoning-Open Space (OS)
Carlsbad Ranch Specific Plan-Open

4. Assessor's Parcel #211-010-24
General Plan-Travel/Recreational Commercial (TR)
Local Coastal Plan-Travel Services Commercial (TR)
Zoning-Public Utility (PU)

Assessor's Parcel #211-023-31
 General Plan – Open Space (OS)
 Local Coastal Plan-Open Space (OS)
 Zoning-Public Utility (PU)

6. Assessor's Parcel #211-023-05 General Plan – Open Space (OS) Local Coastal Plan-Open Space (OS) Zoning-Public Utility (PU)

7. Assessor's Parcel #211-023-28 General Plan – Open Space (OS) Local Coastal Plan-Open Space (OS) Zoning-Open Space (OS) Election Code Section 9212 Report July 5, 2006 Page 11 of 16

8. Assessor's Parcel #208-020-44 (Note: Not identified in the Initiative as an affected assessor's parcel but shown on the exhibit maps contained in the Initiative.

General Plan – Open Space (OS) Local Coastal Plan-Open Space (OS) Zoning-Open Space (OS)

D. Consistency with the Existing General Plan

The Initiative proposes to amend the existing General Plan by making changes to the Vision, the Land Use Element and the Open Space and Conservation Element. The major General Plan consistency and land use policy implications associated with the Initiative relates to its impact on agricultural use in the city and on the provision for providing adequate Travel/Recreation Commercial use in the City's coastal zone.

The long-standing City policy regarding agriculture as a land use, as clearly expressed in the existing General Plan and Local Coastal Program, is that agriculture is an interim, temporary land use. Once a property owner determines that it is economically infeasible to continue to farm their land, they are permitted to develop with an alternative use that is consistent with the permanent land use designated in the General Plan. The proposed Initiative (Sections 3.3 and 3.7) would delete text in the existing General Plan that expresses the City policy that agriculture is an interim land use. It would add text that establishes the policy that agriculture is a longterm, permanent land use in the City (Sections 3.1, 3.3 and 3.5). These policy deletions and additions would apply citywide and not just to the strawberry and flower field areas of the City. For the strawberry and flower field areas, the Initiative would identify these areas as particularly important for continued agricultural use (Sections 3.7, 3.8, 3.11 and 3.13) and further designate them with a new category of land use, Coastal Agriculture (Sections 3.9, 3.13 and 3.14). The Initiative appears to put the burden on the City to ensure continued agricultural production on the areas identified for coastal agriculture (Section 3.12(A.3 and B.2) and Section 3.13(C.4, C.7 and C.8). It is not specified what this really means or whether it commits the City to using financial means, such as subsidies, or other incentives to ensure agricultural production. The prevailing land use policy is that a City cannot force a property owner to farm their land even if the City places an agricultural designation or easement on the property. The property may remain vacant but applying an agricultural designation does not ensure that the land will actually be farmed with flowers or strawberries or other types of crop production.

The proposed Initiative would also make agriculture a Category 1 Priority Open Space Use (Section 3.3). The major land use consistency concern associated with this is that, from a purely environmental standpoint, agriculture is a problematic type of open space use. It eliminates natural habitat, uses chemicals, run-off from agricultural lands negatively impacts other open space uses including waterways, the lagoons and the ocean and it restricts public access to open space areas. For security and chemical risk concerns, most agricultural areas are fenced and public access is prohibited. This is of particular concern along the south shore of Agua Hedionda Lagoon because the General Plan as well as the Local Coastal Plan designates a

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public trail system connecting Cannon Road with the edge of the lagoon and public viewing areas. There are many City residents, especially those living in close proximity to agricultural areas that consider agriculture to be a nuisance type of use because of the environmental issues.

The Initiative proposes to change the General Plan land use designation on 45 acres of land on the south shore of the lagoon at the northeast corner of I-5 and Cannon Road from Travel/Recreational (TR) Commercial to Open Space (OS) and to identify it as part of the coastal agriculture land use category. The existing General Plan considers Travel/Recreation Commercial to be an important land use in the overall development and financial structure of the City. The Travel/Recreation Commercial designation includes uses that serve visitors, tourists and the traveling public as well as residents and workers in the city. The existing General Plan contains the following policy statements relating to Travel/Recreation Commercial uses:

- 1. A City that promotes recreational and tourist-oriented land uses which serve visitors, employees of the industrial and business centers, as well as residents of the city (Land Use Element, Commercial Goal A.4).
- 2. Encourage commercial recreation or tourist destination facilities (Land Use Element, Commercial Implementing Policies C.10).
- 3. Orient travel/recreation commercial areas along the I-5 corridor, in the Village, or near resort/recreation areas (Land Use Element, Commercial Implementing Policies C.11)

E. Consistency with the Habitat Management Plan

The City's Habitat Management Plan (HMP) designates some of the property affected by the Initiative as hard-line preserve area that must be conserved as natural habitat. This would cause inconsistencies between City policies and programs that would have to be resolved if the Initiative is approved. On the one hand, the City would have the HMP mandating that the land be retained in its natural state while the General Plan would be encouraging the land to be used for agricultural production.

F. Consistency with Local Coastal Program and Coastal Act

The Initiative does not specifically propose to amend the City's Local Coastal Program. However, if approved, the proposed Initiative would be inconsistent with the Agua Hedionda Local Coastal Program Land Use Plan (LCP) and the City would be required to process a Local Coastal Program Amendment that would have to be approved by the Coastal Commission. The major area of inconsistency between the Initiative and the Agua Hedionda LCP is explained below.

Similar to the General Plan, the LCP designates the 45-acre portion of the south shore property for Tourist-Serving (TS) Commercial use. The LCP, as originally adopted, allows 45

acres of the property to be developed with commercial use in return for retaining the rest of the south shore portion of the property in some form of open space. The LCP requires an agricultural easement and agricultural zoning to be placed on the open space portion of the property unless an agricultural mitigation program is established for other agricultural lands in the city's coastal zone. In that case, the property could utilize that program and not be subject to the agricultural easement and zoning requirement. This was done through the establishment of the Agricultural Mitigation Fee Program that allows a property owner of agricultural land to use their land for an alternative use upon payment of a fee. The Agricultural Mitigation Fee Program was originally established through state statute and was placed into the State Coastal Act (Section 30171.5 of the Act).

There are at least three implementation concerns that need to be addressed to resolve the inconsistency between the Agua Hedionda LCP and the proposed Initiative if it is approved. The three concerns are as follows:

- 1. Tourist-Serving (TS) Commercial is a high priority use in the State Coastal Act and the LCP. Will the Coastal Commission approve an amendment that deletes this high priority use without replacing it with an equal amount somewhere else in the City's coastal zone? On previous amendments to remove TS in the City, the City was required to replace it. At present, there is not a large amount of vacant property in the City's coastal zone suitable for TS uses.
- 2. Does not allowing some development on the south shore property present a property rights/takings issue? All legal parcels in the city are allowed some level of development rights unless the property owner is compensated for the loss of all development rights.
- 3. What concerns arise with consistency with the Coastal Act since the 'Agricultural Mitigation Fee Program is specifically contained in the Act and the City's overall Local Coastal Program if this property is not permitted to utilize the Fee Program like all other similar properties in the City?

The applicable sections of the Agua Hedionda LCP are attached to this analysis as Attachment "4".

G. Consistency with Carlsbad Ranch Specific Plan

The parcels located south of Cannon Road that are affected by the proposed Initiative (Assessor's Parcel #211-022-21, #211-022-11 and #211-023-13) are located within the boundaries of the Carlsbad Ranch Specific Plan that is also the implementing document for this portion of the Mello II Local Coastal Program Land Use Plan. All of the parcels are designated and zoned for Open Space. One of the parcels is the Flower Fields that the Specific Plan requires to remain in flower production and associated uses in perpetuity. Although agriculture

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is allowed on the other two parcels, the Specific Plan designates them for golf course and other active open space uses. The Specific Plan will probably need to be amended to encourage agriculture on these two parcels and prohibit golf course use.

H. Other Zoning Consistency Matters

Although the Initiative changes the General Plan land use designation of the 45-acre parcel from Travel/Recreation Commercial to Open Space, it does not rezone the property from its existing zoning designation of Public Utility (PU) to Open Space (OS). Similarly, it does not rezone the rest of the SDG&E property from PU to OS. Government Code (GC Section 65860) requires zoning to be consistent with the General Plan. If the Initiative passes, it will create an obvious inconsistency between the General Plan and the Zoning Ordinance which will need to be addressed by the City.

The Initiative will require significant amendments to the zoning provisions applicable to the effected properties in order to bring them into consistency with the Initiative. The City does not have a coastal agriculture zoning designation and one will have to be adopted consistent with this Initiative. In addition, this Initiative does not amend the Local Coastal Program. This will have to be addressed by the Council. The most significant area of controversy will be the 45-acre parcel that is re-designated from Travel/Recreational Commercial to Open Space. This conflicts with the visitor-serving requirements found in the Coastal Act. This portion of the Initiative is subject to the approval of the California Coastal Commission and will not become effective until approved by the Commission.

IV. Regional Housing Needs

Currently, the City of Carlsbad has not designated any portion of the lands impacted by this Initiative for housing to meet its fair share housing needs. The adoption of this Initiative would not change this housing impact emphasis. Regional fair share housing needs will need to be met from lands outside of the areas covered by this Initiative. There will be some indirect impacts in that farm labor housing may continue to be an issue of concern due to the employment requirement of the new agricultural designations.

V. Infrastructure Issues

The attached report by RSG addresses these issues (Attachment 2).

VI. Attraction and Retention of Business

It is required that this Report study the impact of the Initiative on the community's ability to attract and retain business and employment. The attached report by RSG addresses these issues (Attachment 2).

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VII. Impact on Vacant Parcels

To the extent of unused portions of land subject to this Initiative, please see Section III, above.

VIII. Impact on Various Land Uses

Section III lists the impacts of this proposal on agricultural lands and open space. Traffic circulation will not be impacted in that the Strawberry Fields Initiative does not change current land uses but freezes the current land uses (agriculture) in place. The RSG report deals with the impact of the Initiative on existing business districts and developed areas designated for revitalization.

IX. Conclusion

This Report addresses the issues required by the 9212 Report. One of the main difficulties of this Report is determining the land use implications of a change from the areas in question as transitional in nature to a permanent coastal agricultural and open space zoning. At least one property owner has addressed specific questions to the City on this subject. SDG&E, on June 13, 2006 has requested the Citizens' Committee formed by the Council address certain questions related to the proposed Initiative. These questions and responses given by Special Legal Counsel for the City to the Citizens' Committee are attached to this Report as Attachment "5". These questions reflect some of the potential legal challenges that the City may face in implementing this Initiative.

The City Council may either adopt the Initiative as law without placing it on the ballot or let the voters decide in November. It is recommended that the City Council not adopt the Initiative. In addition to the land use and fiscal concerns raised in the Report and its attachments, the procedural problems discussed in Section I of this Report may create serious implementation problems. For example, the retroactive provisions in the Initiative appear to violate State law. While these flaws would probably not result in total invalidation of the Measure in a court of law, adoption at this time would limit the City Council's options in dealing with these legal inconsistencies.

The main thrust of the Strawberry Fields Initiative is to restrict land uses permanently as Open Space and Coastal Agricultural. The creation of a coastal agricultural zone and permanent open space areas will create future challenges for the City Council. The standard applicable to these properties to allow for any changes from these land uses without a vote of the people is based on a standard based on an unconstitutional deprivation of property rights. The City will be required to monitor the state of the law and draft administrative procedures accordingly. The feasibility of keeping these properties in agriculture will also depend on the future of state legislation and regulatory requirements of both the California Energy Commission and the California Public Utilities Commission. The preemptive authority over local land use restrictions could possibly require future City action that may conflict with the goals and policies of the Initiative. The fiscal impacts of this Measure may also be impacted by changes in future state and federal law.

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Finally, if this Initiative is adopted by a vote of the People, the City Council will be required to make numerous land use, LCP, Zoning and procedural changes to existing laws to implement the Strawberry Fields Initiative in a legally appropriate manner. Zoning ordinances and the Carlsbad Ranch Specific Plan will have to be brought into conformity with the newly amended General Plan. The LCP will have to be amended to comply with the changes. These changes will not be effective until approved by the California Coastal Commission. Most of these changes will require public hearings and many will require future CEQA analysis. Implementation will require new review criteria (*i.e.*, Constitutional standards for land use review) never adopted by other California Cities. The implementation of this Initiative may take more time and resources than any other land use procedure ever implemented by the City of Carlsbad.

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Attachment 1

To the Honorable City Clerk of the City of Carlsbad: We, the undersigned, registered and qualified voters of the County of San Diego hereby propose an initiative measure to amend the City of Carlsbad General Plan. We petition you to submit this measure to the City Council of the City of Carlsbad for adoption without change, or for submission of the measure to the voters of the City of Carlsbad at a general or special election. The measure provides as follows:

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SAVE THE STRAWBERRY AND FLOWER GROWING FIELDS ACT OF 2006

The People of the City of Carlsbad do hereby enact and ordain:

Section 1. TITLE.

1.1 This Initiative shall be known and may be cited as the "Save the Strawberry and Flower Growing Fields Act of 2006."

Section 2. PURPOSE AND FINDINGS.

- 2.1 Purpose. The purpose of this initiative is to conserve current coastal Open Spaces and historic coastal agricultural uses within the City of Carlsbad ("City") located at the south shore of the Agua Hedionda Lagoon. The City has a history and policy of promoting and protecting such coastal agricultural uses as well as ensuring environmental protection of its lagoons, watersheds, agricultural lands, open spaces and scenic resources, among others. This initiative amends the Carlsbad General Plan to promote and strengthen the continuation of such landuse policy in this specific sensitive area of the community commonly known as the Strawberry and Flower Growing Fields. Specifically, the initiative provides for a new designation of agricultural lands as coastal agriculture within the Open Space Element of the Carlsbad General Plan for these areas within the Coastal Zone currently in agricultural production, and to conserve these designated areas from premature fragmentation, inappropriate developments or other inconsistent land uses.
- 2.2 History and Location. The City has historically supported the conservation of coastal agriculture as evidenced within its General Plan, Agua Hedionda Land Use Plan - Local Coastal Plan Segment, among other City documents, policies and plans. This initiative will strengthen and promote that City policy. The subject area of this initiative is immediately adjacent to the south shore of the Agua Hedionda Lagoon and is internally contiguous. The area described will form a "T" shape in the Coastal Zone. The bottom of the "T" begins at, and runs in a north to south direction from the north end of Palomar Airport Road between Legoland to the east and commercial developments to the west and northward to Cannon Road. This long rectangular area consists of the "official" Flower Fields of 53.40 acres and the immediately adjacent area of 45.60 acres, also currently in agricultural production. The "top" of the "T" is that area sandwiched between

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Cannon Road to the south and Agua Hedionda Lagoon to the north and running east to west from Interstate 5 toward El Camino Real along the north edge of Cannon Road and the south edge of Agua Hedionda Lagoon. Another area for inclusion is currently in agricultural production and consists of 26.45 acres contiguous with this area, with Cannon Road forming its north boundary and Legoland forming its south boundary. Map locations and Assessor Parcel Numbers ("APN's") are provided herein for location reference. See also, Exhibits A – D for further reference.

- 2.3 Findings. The People of the City of Carlsbad find and declare that the subject lands of this initiative are currently under-protected by City policy and established planning documents including, but not necessarily limited to, the City General Plan and Zoning Ordinances, Agua Hedionda Land Use Plan Local Coastal Plan Segment, Habitat Management Plan, Citywide Facilities Management Plan, Growth Management Plan, South Carlsbad Coastal Redevelopment Plan and Carlsbad Ranch Specific Plan. The People of the City enact this legislation to effectuate necessary guidance for future planning in this important land use area as such affects community desires, health, safety and well being. The City Council is directed by the People to give all effectuation, by whatever means practicable, to implementing the intentions of this initiative.
- 2.4 Recognitions. The People of the City Carlsbad recognize that the area described in this initiative could be developed in the future into residential, commercial or other developments and intend hereby to legislate and provide policy guidance to elected City officials and staff that the will of the People of the City of Carlsbad is to maintain, keep, and conserve these lands as Open Space for land uses consistent with coastal agriculture. It is also acknowledged that property rights negotiations have occurred in the past, and may be occurring currently between the owners of these lands and others with potential residential, commercial or other development interests.

Section 3. GENERAL PLAN AMENDMENTS.

Within this Section the People of the City of Carlsbad hereby readopt, reaffirm and amend the Carlsbad General Plan adopted on September 6, 1994 through City Council Resolution No. 94-246 and as subsequently amended through the filing date of this initiative, as set forth below. Text to be inserted into the General Plan is indicated in **bold** *italic* type while text to be stricken is indicated by -/strikethrough/- (i.e., strikethrough) type, and text in standard type is currently as it appears in the Carlsbad General Plan.

3.1 The VISION AND INTRODUCTION section of the Carlsbad General Plan, Part I. CARLSBAD – THE VISION, the first vision statement located as the first paragraph on the left side of the page on page 1; the text is amended as follows:



A City which provides a balanced variety of land uses for living, business, employment, recreation and open space opportunities *including* appropriate agricultural production areas.

The OPEN SPACE & CONSERVATION ELEMENT of the Carlsbad General Plan, Part II. FRAMEWORK FOR OPEN SPACE & CONSERVATION PLANNING, Section A. Open Space Definition & Classification System, Category 2: Open Space for Managed Production of Resources, located at page 3; the text is amended as follows:

<u>CATEGORY 2:</u> Open Space for Managed Production of Resources

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- (a) Forestry/Agriculture/Aquaculture;
 - i) Forest lands;
 - ii) Rangeland;
 - iii) Agriculture and Coastal Agriculture;
 - iv) Aquaculture
 - v) Horticulture, including greenhouses; or
 - vi) Flower Fields and contiguous Coastal Agriculture.
- 3.3 The OPEN SPACE & CONSERVATION ELEMENT of the Carlsbad General Plan, Part II. FRAMEWORK FOR OPEN SPACE & CONSERVATION PLANNING, Section F. Citywide Open Space Plan, Category 2: Open Space for Managed Production of Resources, located at page 16; the text is amended as follows:

Forestry/Agriculture/Aquaculture (2a)

Forestry, agriculture and aquaculture are considered a category 5 citywide priority for future open space planning except that coastal agriculture areas adjacent to Agua Hedionda Lagoon and as they connect in a contiguous manner with the flower fields shall be considered a Zone Primary Action Priority in Local Facilities Management Zone 13 and shall be considered here a category 1 priority. It is the City's intention to support and utilize all measures available, including, but not limited to, the Williamson Act, to secure agricultural land uses for as long as possible prior to development, and to promote the long-term economic viability of agricultural uses. However, it should be recognized that Carlsbad is an urbanizing city, and the projected pattern of development is such that the extensive areas generally required for economic agricultural operations are unlikely to be available in the longterm.

3.4 The OPEN SPACE & CONSERVATION ELEMENT of the Carlsbad General Plan, Part II. FRAMEWORK FOR OPEN SPACE & CONSERVATION

PLANNING, Section G. Maps of the Open Space & Conservation Element, located at pages 35-36; the Official Open Space & Conservation Map is amended to include an area of land of approximately 45 acres abutting Interstate 5 on the east, Agua Hedionda Lagoon on the north and Cannon Road on the south to be added as Open Space from Travel/Recreation Commercial Use (T-R) to the map as shown through Exhibits C and D as Open Space and coastal agricultural lands and as identified by assessor parcel numbers (APN's) in Sections 3.6 and 3.11 of this Initiative. The People of Carlsbad in amending the Official Open Space & Conservation Map hereby find that (1) The proposed open space is equal to or greater than the area depicted on the Official Open Space and Conservation Map; (2) That the proposed open space area is of environmental quality equal to or greater than that depicted on the Official Open Space and Conservation Map; and (3) the proposed adjustment to open space, as depicted on the Official Open Space as shown on the Official Open Space Map.

3.5 The OPEN SPACE & CONSERVATION ELEMENT of the Carlsbad General Plan, Part III. GOALS OBJECTIVES & IMPLEMENTING POLICIES AND ACTION PROGRAMS, Open Space Planning and Protection segment sub-part A, Goals, located at page 21; the text is amended as follows:

A. GOALS

- A.1 An open space system of aesthetic value that maintains the community identity, achieves a sense of natural spaciousness, and provides visual relief in the cityscape.
- A.2 A city with a balance of programmed and unprogrammed open space within each of the four quadrants of the City.
- A.3 An open space system that improves the quality of life for the citizens of Carlsbad.
- A.4 A city with an adequate amount and variety of open space for outdoor recreation and agricultural production including coastal agricultural production, including, but not limited to: parks; beaches; areas for organized sports; connecting corridors containing trails; water recreation areas (beaches, lagoons, lakes); unique conservation areas for nature study; agriculture including coastal agriculture; and, semi-developed areas for camping.
- 3.6 The OPEN SPACE & CONSERVATION ELEMENT of the Carlsbad General Plan, Part III. GOALS OBJECTIVES & IMPLEMENTING POLICIES AND ACTION PROGRAMS, Open Space Planning and Protection, segment sub-part B, Objectives, located at page 21; the text is amended by adding a new objective after the last stated objective of B. 12, as follows:

B. OBJECTIVES

- B.13 To provide for continued coastal agricultural production adjacent to Agua Hedionda Lagoon forming as contiguous as possible a connection with the flower fields and utilizing the area between the south shore of the lagoon and the north edge of Cannon Road and contiguous parcels for continued coastal agricultural production including, but not limited to, flower fields and strawberry fields.
- 3.7 The OPEN SPACE & CONSERVATION ELEMENT of the Carlsbad General Plan, Part III. GOALS OBJECTIVES & IMPLEMENTING POLICIES AND ACTION PROGRAMS, Promoting Agriculture, located at page 29; the text is amended as follows:

PROMOTING AGRICULTURE

Agriculture is an important resource in the City of Carlsbad, in particular coastal agriculture in the vicinity of Agua Hedionda Lagoon and its connection with the flower fields is in integral resource deserving of special conservation measures. Agriculture policies are intended to support agriculture activities while planning for possible future transition to more urban uses consistent with the policies of the Land Use Element and the Carlsbad Local Coastal Program.

A. GOAL

A city which recognizes the important value of agriculture and horticulture lands. A City which recognizes the unique value of coastal agriculture uses adjacent to Agua Hedionda lagoon and contiguous agricultural open space areas with the flower fields.

- B. OBJECTIVES
- B.1 To develop an inventory of agricultural uses in the City, and to identify areas of coastal agriculture in the vicinity of Agua Hedionda Lagoon where conservation and special programs may be established to ensure long term operational viability of these important coastal agricultural areas.
- B.2 To promote the establishment of agricultural preserves.
- B.3 To promote the use of technology for agricultural purposes to improve the economic viability of agriculture.
- B.4 To ensure that new development is sensitive to existing agricultural uses.
- B.5 To ensure that agricultural uses do not adversely impact sensitive environmental resources—, through the use of appropriate mitigation measures, where applicable.
- 3.8 The OPEN SPACE & CONSERVATION ELEMENT of the Carlsbad General Plan, Part III. GOALS OBJECTIVES & IMPLEMENTING POLICIES AND ACTION PROGRAMS, Promoting Agriculture, Implementing Policies and

Action Programs sub-part, located at pages 29-30; the text of paragraphs C.1 through C.17 are retained in their entirety, a new paragraph is inserted as C.18 and the text is amended as follows:

IMPLEMENTING POLICIES AND ACTION PROGRAMS

C.18 Continuation of coastal agricultural production along the south shore of Agua Hedionda Lagoon and forming as contiguous as possible a connection with the flower fields is a priority for agricultural conservation within the Land Use Element and the Open Space & Conservation Element of the City of Carlsbad General Plan. The following areas as identified by assessor parcel numbers (APN's) shall be included as open space for coastal agricultural production deserving of special resource protections by the City: APN 211-023-13; APN 211-023-11; APN 211-022-21; APN 211-010-24; APN 211-010-05; APN 211-010-31; APN 211-010-28, as is further identified graphically on Exhibits A-D. All maps, charts and graphs shall be amended by the City to reflect their inclusion as such.

3.9 The OPEN SPACE & CONSERVATION ELEMENT of the Carlsbad General Plan, Part IV. Glossary, located at page 40; the text is amended by adding a definition of Coastal Agriculture to the definitions contained therein and the text is amended as follows:

COASTAL AGRICULTURE

Lands located within the coastal zone of the City that support production of agricultural products.

3.10 The LAND USE ELEMENT of the Carlsbad General Plan, Part II, DESCRIPTION OF THE LAND USE, Section A. City Form and Function, subpart 2. Major Factors Affecting Form, Factor 2: Airport and Nonresidential Corridor, the second full paragraph, located at page 3; the text is amended as follows:

"Factor 2: Airport and Nonresidential Corridor"

This nonresidential corridor extends beyond the actual influence area of the airport, all the way to the ocean and the mouth of Agua Hedionda Lagoon. The extension comes about due to the proximity of the airport's influence area to the 640-acre utility corridor owned by San Diego Gas and Electric for the Encina Power Plant and its associated major transmission right-of-way along the southerly shore of Agua Hedionda Lagoon. Land within this ownership may be used only for industrial scale utility functions existing utility transmission corridors, coastal agricultural production and open space.

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3.11 The LAND USE ELEMENT of the Carlsbad General Plan, Part II,
DESCRIPTION OF THE LAND USE, Section D. Special Planning
Considerations, sub-part 5. Agriculture, located at page 26; the text of the first full
paragraph is amended as follows, the two paragraphs that follow are retained in
their entirety:

5. AGRICULTURE

Agricultural is an important resource in Carlsbad. In particular, coastal agricultural uses adjacent to Agua Hedionda Lagoon are of a high conservation priority for the City. The City's agricultural policies are intended to support agricultural activities while planning for future transition of the land to more Open Space, Community Parks, or urban uses consistent with the policies of the General Plan and the Carlsbad Local Coastal Plan (LCP).

3.12 The LAND USE ELEMENT of the Carlsbad General Plan, Part III, GOALS, OBJECTIVES AND IMPLEMENTATION POLICIES AND ACTION PROGRAMS, Agriculture, located at pages 37 - 38; the text is amended as follows:

AGRICULTURE

- A. GOALS
- A.1 A City which prevents the premature elimination of agricultural lands and preserves said lands wherever possible.
- A.2 A City which supports agriculture while planning for possible transition to urban uses.
- A.3 A City which recognizes the importance of, and effectively plans for, continued coastal agricultural production adjacent to Agua Hedionda Lagoon including, but not limited to, conserving contiguous parcels with the flower fields.
- B. OBJECTIVES
- B.1 To permit agricultural land uses throughout the City.
- B.2 To conserve the largest possible amount of undeveloped land suitable for agricultural purposes, through the willing compliance of affected parties: or the establishment of special City programs designed to ensure that coastal agricultural production is maintained.

B.3 To develop measures to ensure the compatibility of agricultural

3.13 The LAND USE ELEMENT of the Carlsbad General Plan, Part III, GOALS, OBJECTIVES AND IMPLEMENTATION POLICIES AND ACTION PROGRAMS, Agriculture, Section C, Implementing Policies and Action Programs, located on page 38; the text is amended by retaining the text of Paragraphs C.1, C.2, C.3, C.5, and C.6 in their entirety, and amending paragraph C.4 as follows, and adding two new paragraphs C.7 and C.8 as follows:

production and adjacent land uses.

- C.4 Attempt to preserve Conserve by whatever means practicable the flower fields or lands east of I-5 to the first ridge line between Cannon Road and Palomar Airport Road, and contiguous connections to agricultural lands to the north located on the south shore of Agua Hedionda Lagoon that run easterly from I-5 along Cannon Road through whatever method created and most advantageous to the City of Carlsbad.
- C.7 Actively pursue all practicable methods or modes of conservation of contiguous coastal agricultural lands with the flower fields identified above in paragraph C.4 to ensure such coastal agricultural production on the south shore of Agua Hedionda Lagoon continues, and to conserve these lands currently in agricultural production to retain their agricultural uses into the long-term by whatever means practicable.
- C.8 Continuation of coastal agricultural production along the south shore of Agua Hedionda Lagoon and forming as contiguous as possible a connection with the flower fields is a priority for agricultural conservation within the Land Use Element and Open Space & Conservation Element of the City of Carlsbad General Plan. The following areas as identified by assessor parcel numbers (APN's) shall be included as open space for coastal agricultural production deserving of special resource protections by the City: APN 211-023-13; APN 211-023-11; APN 211-022-21; APN 211-010-24; APN 211-010-05; APN 211-010-31; APN 211-010-28, as is further identified graphically on Exhibits A-D. All maps, charts and graphs shall be amended by the City to reflect their inclusion as such.
- 3.14 The LAND USE ELEMENT of the Carlsbad General Plan, Part II.

 DESCRIPTION OF THE LAND USE, Map 2: General Plan Land Use Map, located on pages 7-8 is amended to include an area of land of approximately 45 acres abutting Interstate 5 on the east, Agua Hedionda Lagoon on the north and Cannon Road on the south to be added as Open Space from Travel/Recreation Commercial Use (T-R) to the map as shown through Exhibits A and B as Open Space and coastal agricultural lands and as identified by assessor parcel numbers (APN's) in Sections 3.6 and 3.11 of this Initiative.

3.15 The LAND USE ELEMENT of the Carlsbad General Plan, Part IV. Glossary, located at page 41; the text is amended by adding a definition of Coastal Agriculture to the definitions contained therein and the text is amended as follows:

COASTAL AGRICULTURE

Lands located within the coastal zone of the City that support production of agricultural products.

Section 4. IMPLEMENTATION.

- 4.1 Effective Date. Upon the effective date of this initiative, the provisions of this initiative are hereby inserted into the City of Carlsbad General Plan as an amendment thereof, except that if the amendments of the mandatory elements of the general plan permitted by State law for any given calendar year have already been utilized in the calendar year in which the initiative becomes effective, this general plan amendment shall be the first amendment inserted in the City's General Plan on January 1 of the next year. At such time as this general plan amendment is inserted in the City of Carlsbad General Plan, any provisions of the City Zoning Ordinance, as reflected in the ordinance itself or the City Zoning Map, inconsistent with this general plan amendment shall not be enforced.
- Interim Amendments. The City of Carlsbad General Plan in effect at the time the Notice of Intention to circulate this initiative measure was submitted to the City Elections Official (December 19, 2005 "submittal date"), and that General Plan as amended by this initiative measure, comprise an integrated, internally consistent and compatible statement of policies for the City. In order to ensure that the City of Carlsbad remains an integrated, internally consistent and compatible statement of policies for the City as required by State law and to ensure that the actions of the voters in enacting this initiative are given effect, any provision of the General Plan that is adopted between the submittal date and the date that the General Plan is amended by this measure shall, to the extent that such interim-enacted provision is inconsistent with the General Plan provisions adopted by this initiative measure, be amended as soon as possible and in the manner and time required by State law to ensure consistency between the provisions adopted by this initiative and other elements of the City's General Plan.
- 4.3 Other City Ordinances and Policies. The City of Carlsbad is hereby authorized and directed to amend the General Plan, sub-plans, community plans, specific plans, zoning ordinance, and other ordinances and policies and/or plans affected by this initiative as soon as possible and in the manner and time required by any applicable State law to ensure consistency between the policies adopted in this initiative and other elements of the City's General Plan, zoning ordinance, and other City ordinances, policies and/or plans as may be the case.

Section 5. EXEMPTIONS AND EXCEPTIONS FOR CERTAIN MATTERS.

- 5.1 This initiative shall be subject to amendment by the City Council without the required vote of the People of Carlsbad upon a showing of substantial evidence on the record that implementation or operation of this initiative will frustrate City functions in any of the following circumstances:
 - (a.) To affect City compliance with any State mandated programs, including but not limited to: housing requirements; density bonuses; development agreements; certified redevelopment plans; vesting tentative maps; or other matters otherwise required by State law;
 - (b.) To deprive any person, organization or entity of their Constitutional rights, including property rights, and no takings shall be allowed through the construction or implementation of this initiative;
 - (c.) To affect any development project that has obtained as of the effective date of the initiative a vested right pursuant to State or local law.

Upon such a showing the City Council may amend this Initiative in manner that most narrowly construes the City's compliance obligations, or liability, as the case may be, yet at the same time balances the broadest possible construction and implementation of the intentions of this Initiative. Any such amendments allowable to the City Council shall not impair the right of the People of Carlsbad to subsequently seek a Referendum overturning such actions if they so choose.

5.2 The City, through its City Council may amend this initiative without a vote of the People to engage in any agricultural conservation act consistent with the intentions of this initiative, including, but not limited to, Williamson Act activities or the creation of, or implementation of, any other City sponsored agricultural program or activity designed to enhance, promote, or conserve agricultural opportunities within the City and specifically within the coastal agricultural areas established by this initiative.

Section 6. SEVERABILITY AND INTERPRETATION.

6.1 This measure shall be interpreted so as to be consistent with all federal and state and municipal laws, rules, and regulations. If any section, sub-section, sentence, clause, phrase, part, or portion of this measure is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this measure. The voters and People of Carlsbad hereby declare that this measure, and each section, sub-section, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, sub-sections, sentences, clauses, phrases, parts, or portions are declared invalid or unconstitutional. If any provision of this measure is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this measure that can be given effect without the invalid application. This initiative shall be broadly construed in order to achieve the purposes stated in this initiative. It is the intent of the voters and People of Carlsbad that the provisions of this measure shall be interpreted by



the City and any courts of competent jurisdiction in a manner that facilitates the protection of the resources described herein.

Section 7. AMENDMENT OR REPEAL.

7.1 Except as otherwise provided herein, the implementation and operation of this initiative may only be amended or repealed by a majority vote of the registered voters of the City of Carlsbad.

Section 8. COMPETING MEASURES.

8.1 In the event there are competing measures on the same ballot with this measure that purport to address the same subject matter of this measure, the following rules shall apply: If more than one such measure passes, then both measures shall go into effect except to the extent that particular provisions of one initiative are in direct, irreconcilable conflict with particular provisions of another initiative. In that event, as to those conflicting provisions, only the provisions of the initiative receiving the most votes shall prevail.

Exhibit List

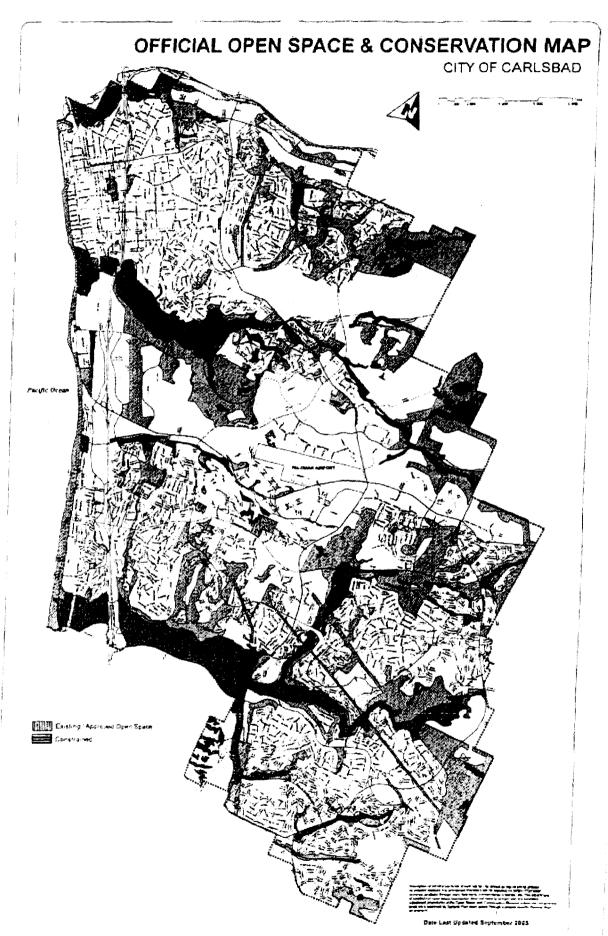
Exhibit A: Existing Official City of Carlsbad Official Open Space & Conservation Map

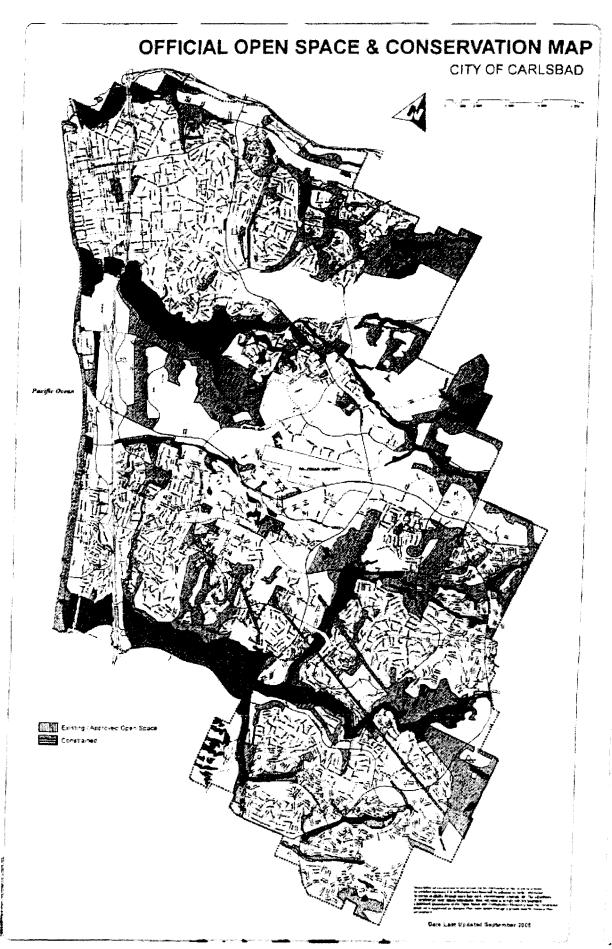
Exhibit B: Amended Official City of Carlsbad Official Open Space & Conservation Map

Exhibit C: Existing City of Carlsbad General Plan Land Use Map.

Exhibit D: Amended City of Carlsbad General Plan Land Use Map.









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January 3, 2006

TO:

CITY CLERK

FROM:

CITY ATTORNEY

Attached to this memorandum, please find the City Attorney's Title and Summary of the proposed Initiative submitted by your office under the memorandum of December 19, 2005.

Should you have any questions please do not hesitate to contact me.

RONALD. R. BALL City Attorney

rn attachment

General Plan Amendment Initiative to be Submitted Directly to the Voters

The City Attorney has prepared the following Title and Summary of the chief purpose and points of the proposed measure.

Summary:

This proposed General Plan Initiative Amendment amends the Carlsbad General Plan to establish a coastal agriculture designation for lands located within the Coastal Zone of the City that support the production of agricultural products. The initiative contains eight sections:

Section One:

Titles the Initiative as the "Save the Strawberry and Flower Growing Fields Act of 2006".

Section Two:

States the purpose and findings.

Section Three:

Amends the vision, introduction, land use, open space and conservation elements of the Carlsbad General Plan to:

- Add the designation of Coastal Agriculture, which is defined as lands located within the Coastal Zone of the City that support production of agricultural products.
- 2) Eliminate the concept of potential development and the recognition that Carlsbad is an urbanizing city and instead establishes coastal agricultural areas adjacent to the Agua Hedionda Lagoon.
- 3) Add approximately 45 acres east of Interstate 5 between Agua Hedionda Lagoon and Cannon Road to the Coastal Agriculture designation.
- 4) Eliminate the presumption that agricultural policies are intended to support agriculture activities while planning for possible future transition to more urban uses and instead establishes coastal agriculture in the vicinity of Agua Hedionda Lagoon and its connection with the Flower Fields as deserving of special conservation measures and continued coastal agricultural production.
- 5) Identify the areas subject to the initiative by exhibit.
- 6) Eliminate the potential for industrial scale utility functions within the 640-acre utility corridor owned by San Diego Gas and Electric for the Encina Power Plant and restricts uses to only existing utility transmission corridors, coastal agricultural production and open space.
- 7) Conserve and insure coastal agricultural production by whatever means practicable and re-designates approximately 45 acres described above from travel/recreational commercial use to open space and coastal agricultural land.

Section Four:

The effective date is the date of the adoption of the Amendment by the voters or January 1 of the year following adoption by the voters and prohibits inconsistent amendments after December 19, 2005, the date that it was submitted to the City Clerk and directs the City to amend the General Plan, Sub-Plans, Community Plans, Specific Plans, Zoning Ordinances to make them consistent with this Initiative.

Section Five:

Permits amendment of this Initiative by the City Council without a vote of the people in certain circumstances to comply with any state mandated programs, that results in a violation of the Constitutional Rights of any person or entity or to disturb a vested right under state or local law.

Section Six:

If parts of the Initiative are declared invalid by a court, the remainder of the Initiative is valid.

Section Seven:

Except as provided in the Initiative itself, it may not be amended unless by a majority vote.

Section Eight:

If there are competing measures on the same ballot then only those irreconcilable conflicting provisions, which receive the highest number votes shall go into effect.

Attachment 2



Fiscal Impact Report on the Save the Strawberry Growing Fields Act of 2006

July 18, 2006



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INTRODUCTION

Pursuant to Section 9212(a) of the Elections Code, RSG has prepared this fiscal impact report to assess the initial and long-term financial implications of enactment of the Save the Strawberry Growing Fields Act of 2006 ("Initiative"). On June 20, 2006, the Carlsbad City Council requested preparation of a report on various matters relating to the Initiative.

This report addresses the fiscal impacts and other areas identified in Section 9212(a), specifically:

- Fiscal impact (Elections Code Section 9212(a)(1));
- Impact on funding for infrastructure of all types (Elections Code Section 9212(a)(4));
- Impact on the community's ability to attract and retain business and employment (Elections Code Section 9212(a)(5)); and
- Impact on existing business districts and developed areas designated for revitalization (Elections Code Section 9212(a)(7)).

Other impacts associated with this Initiative are addressed in a supplemental report prepared by City staff.

On July 18, 2006, the City Council will be presented this report prior to taking procedural actions related to the Initiative.

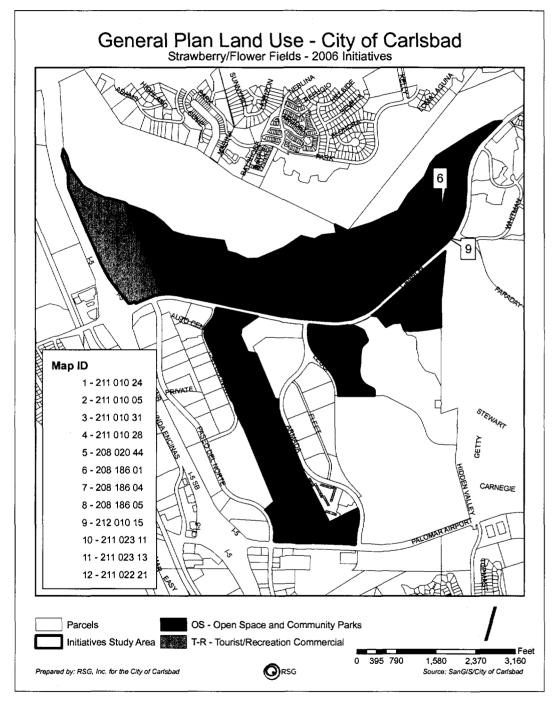
Findings

In general, the Initiative would direct the City of Carlsbad to provide further land use restrictions on approximately 430.32 acres of property in the area of Cannon Road east of Interstate 5 ("Site"). In today's dollars, the implications of the Initiative include:

- One time and implementation costs ranging from \$28.5 to \$36.5 million, including possible acquisition costs and unmitigated development fee losses;
- Net annual losses to the City's General Fund, the Redevelopment Fund, and the Tourism Business Improvement District ranging from \$2.8 to \$3.0 million, <u>exclusive</u> of potentially significant costs to maintain agricultural businesses on the Site;
- Lost potential of attracting between 902 and 926 jobs to the City; and
- Lower funding for redevelopment and affordable housing projects in the South Carlsbad Coastal Redevelopment Project Area.

Description of the Site

The following map identifies the 12 affected parcels and the corresponding land use designations in the City's General Plan.



Presently, the Site is largely undeveloped. Agricultural uses include strawberry production on portions of two parcels north of Cannon Road nearest Interstate 5 and flower production on the parcel adjacent to Palomar Airport Road. This latter



parcel is the location of the Flower Fields, a 53.65-acre parcel deed-restricted for perpetual flower production.

The City's General Plan designates all but one of these parcels as Open Space (OS); one parcel (at the northwest corner of Cannon Road and Interstate 5) is designated for Travel/Recreational Commercial (TR) use.

A summary of existing uses and general plan designations by Assessor's Parcel Number (APN) is presented in the table below. Please note that this report references parcels in the Site based on the Map ID number noted in the table.

Map ID	Assessor's Parcel Number	Owner	Acres ¹	Existing Use(s)	General Plan Designation
1	211-010-24	San Diego Gas & Electric	49.20	Growing Fields	Travel/Recreational Commercial
2	211-010-05	Winter, Ray & Constance	1.40	Growing Fields	Open Space
3	211-010-31	San Diego Gas & Electric	181.15	Growing Fields, Undeveloped	Open Space
4	211-010-28	San Diego Gas & Electric	15.99	Growing Fields, Undeveloped	Open Space
5	208-020-44 ²	State of Califomia (Dept. of Fish & Game)	48.88	Undeveloped	Open Space
6	208-186-01	Kelly Land Co.	0.45	Undeveloped	Open Space
7	208-186-04	Kelly Land Co.	4.79	Undeveloped	Open Space
8	208-186-05	Agua Hedionda Lagoon Foundation	2.63	AHLF Visitors Center	Open Space
9	212-010-15	City of Carlsbad	0.20	Undeveloped	Open Space
10	211-023-11	Carlsbad Ranch Company LP	45.60	Growing Fields, Undeveloped	Open Space
11	211-023-13	Carlsbad Ranch Company LP	26.38	Growing Fields, Undeveloped	Open Space
12	211-022-21	C B Ranch Enterprises	53.65	Flower Fields	Open Space
	Total		430.32		

Permitted Uses

The Site falls under the jurisdiction of several local (City) and state (California Coastal Commission) planning designations and codes that regulate uses of the site. Presently, the City's General Plan and other local planning overlays are consistent with the City's Local Coastal Program (LCP) prepared for the Coastal Commission. The Initiative does not propose to alter the Local Coastal Program, so implementation of the Initiativecannot occur without subsequent approval of all applicable changes to the LCP necessary to effectuate the intent of the Initiative by the Coastal Commission.

Uses permitted by the General Plan are described below:

² Only 41 percent of this parcel's is located within the boundaries of the area affected by the Initiative. Acreage shown is only the portion within the Initiative area.



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¹ Source: SanGIS/City of Carlsbad

- Open Space: Aside from the parcel designated for TR uses described below, all parcels are designated for Open Space use in the General Plan. Open Space may include land or water for the preservation of natural resources; the managed production of resources; outdoor recreation; aesthetic, cultural and educational purposes; and for public health and safety. In general, it has been anticipated that the Open Space uses in the Site would be used for environmental protection, golf course use, agriculture, and park uses.
- <u>Travel/Recreational Commercial (TR)</u>: APN 211-010-24 (Parcel 1) is the only parcel in the Site designated for Travel/Recreational Commercial use in the General Plan. According to the General Plan Land Use Element, this land use category permits development of visitor attractions and commercial uses that serve the travel and recreational needs of tourists, residents and employees of business and industrial centers. The particular uses permitted under the designation include hotels, restaurants, specialty retail and other uses. Under the Zone 13 of the Local Facilities Management Plan (LFMP), the City has established a cap on the number of vehicle trips per day for this parcel which in turn places a limit on the maximum building area permited.

Existing Easements and Other Constraints on Use

Eight of the twelve parcels of the Site (Parcels 1, 3, 5, 6, 7, 8, 9, and 12) have specific constraints that affect development and use. These constraints include the following:

- San Diego Gas and Electric (SDG&E) Transmission Lines;
- Coastal Commission Habitat Conservation Area;
- Habitat Management Plan Area;
- HUB Park Site: and
- The Flower Fields.

In the interest of brevity, we have not prepared a description of the nature of these constraints.; Effectively, these four constraints reduce the potential developable area of the three parcels along the Agua Hedionda Lagoon, conditions that RSG has considered in our forecast of fiscal impacts.

Description of the Initiative

Based on an analysis by City staff, the purposes of the Initiative are to do the following:

- To support the continuation of agriculture in the Site;
- To create a new land use designation of "Coastal Agriculture" and apply it to the entire Site;



• To conserve the Site from inappropriate development and other inconsistent land uses.

As a result of the local land use policy changes enacted by the Initiative, portions of the Site would see more significant shifts in permitted uses, provided the Coastal Commission subsequently approves concurring policies to the LCP. The significant changes to permitted uses include:

- Prohibit development on Parcel 1 (APN 211-010-24): None of the 463,000 square feet of permitted tourist commercial uses could be developed under the Initiative
- Prohibit a property owner from changing to a non-agricultural use in the future.
- Narrow designation of open spaces to coastal agricultural uses with little specification on the intended impacts on existing open space uses that are not currently agricultural in nature.

ASSUMPTIONS

This report primarily focuses on the implications of removing the ability to develop revenue generating uses for the City. The computation of the near-term and long-term impacts of this are based on several assumptions regarding the ultimate use of the Site, both under the current General Plan and as proposed by the Initiative, as listed below.

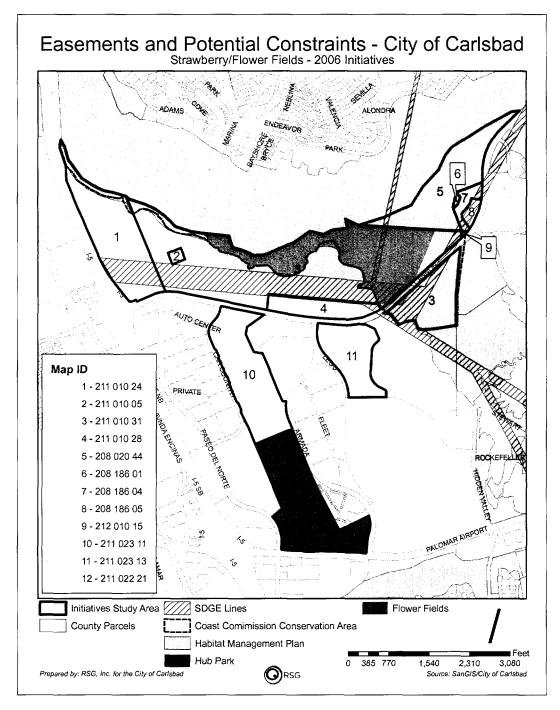
Assumed Build Out as Permitted by General Plan

The Site is largely undeveloped presently, although uses varying from retail, to hotel, to golf course, to passive open space have been envisioned for the area by the City's General Plan and the Carlsbad Ranch Specific Plan. For the most part, the majority of the Site is presumed to remain open space, although in some cases the form of what is characterized open space would possibly differ from what is on the Site today. More significantly, the General Plan permits the development of up to 463,000 square feet of tourist-serving commercial uses on a parcel (Parcel 1) that is largely used for strawberry farming today.

In developing the projection of potential "build out" under the existing General Plan, RSG took into consideration several existing constraints on the Site, including the SDG&E transmission lines and environmental easements. Of the 430.32 acre Site, a total of 280.15 acres are constrained and not truly available for development. Consequently, these constraints were essentially treated as easements for this study, and RSG did not assume any development of the land in those locations.

A map of the existing constraints is presented below:





For the remaining 150.17 unconstrained acres, RSG's build out assumptions were developed in consultation with City Planning staff to ensure consistency with land use policies and recent market trends. Our specific development assumptions are noted below:

Parcel 1 (No Hotel Alternative) - 463,000 s.f. Commercial Center Alternative: Of this 49.20-acre parcel, 14.46 acres would be constrained due to



FISCAL IMPACT REPORT ON THE SAVE THE STRAWBERRY GROWING FIELDS ACT OF 2006

City of Carlsbad

environmental easements along the Agua Hedionda Lagoon and the SDG&E transmission lines. The remaining 34.74 acres could be developed with up to 463,000 square feet of tourist commercial uses under the City's LFMP. Taking into consideration surrounding land uses (which are both a positive and negative influence on the development potential of this parcel), this alternative assumes the project would consist of restaurant and destination retail uses complimenting similar uses nearby.

RSG's pro forma model of the costs of development of this alternative is presented below.



FISCAL IMPACT REPORT ON THE SAVE THE STRAWBERRY GROWING FIELDS ACT OF 2006 City of Carlsbad

PROFORMA CARLSBAD "STRAWBERRY FIELDS" COMMERCIAL DEVELOPMENT DRAFT FINANCIAL PROFORMA - w/out Hotel				
Net Site Size (in acres):	34.7			
Commercial Acres (%)	100.0%			
Commercial Square Feet	1,513,274			
Commercial FAR	0.31			
Commercial Building (S.F.)	463,000			
PROJECT COST	SF/UNITS/SP	PER SF/SP	TOTAL	
ACQUISITION COSTS	1,513,274	\$0.00	\$0	
TOTAL ACQUISITION COSTS		******	\$0	
DIRECT CONSTRUCTION COSTS:				
DEMOLITION	0	\$0.00	\$0	
OFFSITE/INFRASTRUCTURE/UTILITIES	1,513,274	\$2.00	\$3,026,549	
SITE COSTS (including landscaping)	1,513,274	\$2.00	\$3,026,549	
COMMERCIAL BUILDING SHELL ONLY	450 000	¢75 00	£44.0E0.000	
Major Anchor	150,000	\$75.00 \$75.00	\$11,250,000	
Junior Anchor	50,000	\$75.00	\$3,750,000	
Junior Anchor	30,000	\$75.00	\$2,250,000	
Junior Anchor	30,000	\$75.00	\$2,250,000	
Junior Anchor	30,000	\$75.00	\$2,250,000	
Fitness Club	20,000	\$100.00	\$2,000,000	
Bookstore	17,000	\$80.00	\$1,360,000	
Destination Restaurant	20,000	\$120.00	\$2,400,000	
Restaurants	62,000	\$100.00	\$6,200,000	
In-Line Shops COMMERCIAL BUILDING TENANT IMPROVEMENT COST	54,000	\$80.00	\$4,320,000	
	450,000	6 30 00	\$6,000,000	
Major Anchor	150,000	\$40.00	\$6,000,000	
Junior Anchor	50,000	\$35.00	\$1,750,000	
Junior Anchor	30,000	\$35.00	\$1,050,000	
Junior Anchor	30,000	\$35.00	\$1,050,000	
Junior Anchor	30,000	\$35.00	\$1,050,000	
Fitness Club	20,000	\$40.00	\$800,000	
Bookstore	17,000	\$40.00	\$680,000	
Destination Restaurant	20,000	\$100.00	\$2,000,000	
Restaurants	62,000	\$80.00	\$4,960,000	
In-Line Shops	54,000	\$40.00	\$2,160,000	
FURNITURE FIXTURES & EQUIPMENT (Restaurants only)	62,000	\$10.00	\$620,000	
GENERAL CONDITIONS	72,000	\$5.00	\$360,000	
TOTAL CONSTRUCTION		\$1,354	\$66,563,098	
TOTAL LAND & CONSTRUCTION			\$66,563,098	
	% of	\$ per Bldg.		
INDIRECT CONSTRUCTION COSTS:	construction	Sq. Ft.	Total	
PROFESSIONAL/CONSULTANT FEES	4.0%	\$36.98	\$2,662,524	
PUBLIC PERMITS & FEES	5.0%	\$46.22	\$3,328,155	
IMPACT FEES	0.0%	\$0.00	\$3,520,150	
TAXES, INSURANCE, LEGAL & ACCOUNTING	2.0%	\$18.49	\$1,331,262	
MARKETING	1.0%	\$9.24	\$665,631	
COMMISSIONS DEVICE OPER SEE (Administration & Overhead)	2.0%	\$18.49	\$1,331,262	
DEVELOPER FEE (Administration & Overhead)	3.0%	\$27.73 \$46.22	\$1,996,893 \$3,39,465	
CONTINGENCY TOTAL SOFT COSTS *	5.0% 22.0%	\$46.22 \$203.39	\$3,328,155 \$14,643,881	
FINANCING:				
CONSTRUCTION FINANCING	8.3%	\$77.03	\$5,546,126	
FINANCING FEES	1.8%		\$1,218,105	
TOTAL FINANCING	10.2%		\$6,764,230	
TOTAL PROJECT COST		\$190.00	\$87,971,209	



City of Carlsbad

Parcel 1 (Hotel Alternative) – 391,000 s.f. Commercial Center with 120 Room Hotel Alternative: City staff reports that there is an acute demand for mid-range hotels in the market area and as one of the few remaining sites along the coast for such use, this parcel could house such a facility. Given the views of transmission lines and a power generating facility across Interstate 5, hotel operators report that even with additional amenities this property could not be developed to a resort (4- or 5-star) standard. Consequently, RSG assumed a more realistic hotel development, featuring a 3-star, 120 room facility of approximately 72,000 square feet. The remainder of the developable area of this parcel would be comprised of 391,000 square feet of restaurant and retail uses similar to those described above.

A pro forma depicting a breakdown of our construction cost estimates for this alternative is presented below:



PROFORMA CARLSBAD "STRAWBERRY FIELDS" COM		OPMENT	
DRAFT FINANCIAL PROFORM			***
Net Site Area (in acres): Commercial Acres (%)	34.7 100.0%		
Residential Acres (%)	0.0%		
Total Acres (%)	100.0%		
Commercial Square Feet	1,513,274		
Commercial FAR	0.31		
Commercial Building (S.F.)	463,000		
PROJECT COST	SF/UNITS/SP	PER SF/SP	TOTAL
ACQUISITION COSTS	1,513,274	\$0.00	\$0
TOTAL ACQUISITION COSTS			\$0
DIRECT CONSTRUCTION COSTS:			
DEMOLITION	0	\$0.00	\$0
OFFSITE/INFRASTRUCTURE/UTILITIES	1,513,274	\$2.00	\$3,026,549
SITE COSTS (including landscaping) COMMERCIAL BUILDING SHELL ONLY	1,513,274	\$3.50	\$5,296,460
Hotel (120 Rooms)	72,000	\$120.00	\$8,640,000
Major Anchor	150,000	\$75.00	\$11,250,000
Junior Anchor	50,000	\$75.00	\$3,750,000
Junior Anchor	30,000	\$75.00	\$2,250,000
Junior Anchor	30,000	\$75.00	\$2,250,000
Fitness Club	20,000	\$100.00	\$2,000,000
Bookstore	17,000	\$80.00	\$1,360,000
Destination Restaurant	10,000	\$120.00	\$1,200,000
Restaurants	30,000	\$100.00	\$3,000,000
In-Line Shops	54,000	\$80.00	\$4,320,000
COMMERCIAL BUILDING TENANT IMPROVEMENT COST	5.,555	\$00.00	V .,025,000
Major Anchor	150,000	\$40.00	\$6,000,000
Junior Anchor	50,000	\$35.00	\$1,750,000
Junior Anchor	30,000	\$35.00	\$1,050,000
Junior Anchor	30,000	\$35.00	\$1,050,000
Fitness Club	20,000	\$40.00	\$800,000
Bookstore	17,000	\$40.00	\$680,000
Destination Restaurant	10,000	\$100.00	\$1,000,000
Restaurants	30,000	\$80.00	\$2,400,000
In-Line Shops	54,000	\$40.00	\$2,160,000
FURNITURE FIXTURES & EQUIPMENT (Hotel&Restaurant only)	102,000	\$35.00	\$3,570,000
GENERAL CONDITIONS	72,000	\$5.00	\$360,000
TOTAL CONSTRUCTION		\$1,391	\$69,163,009
TOTAL LAND & CONSTRUCTION			\$69,163,009
	% of	\$ per Bldg.	
INDIRECT CONSTRUCTION COSTS:	construction	Sq. Ft.	<u>Total</u>
PROFESSIONAL/CONSULTANT FEES	4.0%	\$38.42	\$2,766,520
PUBLIC PERMITS & FEES	5.0%	\$48.03	\$3,458,150
TAXES, INSURANCE, LEGAL & ACCOUNTING	2.0%	\$19.21	\$1,383,260
MARKETING	1.0%	\$8.41	\$605,230
COMMISSIONS	2.0%	\$16.81	\$1,210,460
DEVELOPER FEE (Administration & Overhead)	3.0%	\$28.82	\$2,074,890
CONTINGENCY TOTAL SOFT COSTS	5.0% 21.6%	\$48.03 \$207.73	\$3,458,150 \$14,956,662
	,		Ţ,= ~,
FINANCING: CONSTRUCTION FINANCING	8.3%	\$79.84	\$5,748,437
FINANCING FEES	1.8%		\$1,261,795
TOTAL FINANCING	10.1%		\$7,010,232
TOTAL PROJECT COST		\$196.82	\$91,129,9 0 3



- Parcels 4, 10 and 11 9 Hole Golf Course: Under the Carlsbad Ranch Specific Plan, this 87.97-acre group of parcels were intended to be used as a golf course, and the most recent discussions with City staff and the property owners involved a proposal to extend the City's nearby 18 hole course by adding another 9 holes of golf at this satellite location. The site is too small to accommodate a regulation 18-hole golf course, parking, and clubhouse facility, but amply suited for a 9-hole course. Though these parcels are not contiguous, RSG understands from City Planning staff that a series of tunnels under Cannon Road exist to connect the parcels for golf use. In consultation with golf course construction contractors, RSG assumed development of approximately half of this site for a golf course, plus another 1,500 square foot building for restrooms, snack bar, and maintenance equipment storage.
- Parcel 12 Flower Fields: Parcel 12 has a deed restriction that mandates
 the property be used in perpetuity for flower production. Although the
 property owner (CB Ranch Enterprises) may modify this obligation under
 certain circumstances, RSG has assumed no change to this deed restriction
 or use.
- Parcel 8 AHLF Discovery Center: Parcel 8 contains the 3,500 square foot visitors' center operated by the Agua Hedionda Lagoon Foundation (AHLF). This property is essentially "built out"; no change in land use is anticipated by RSG. As a tax-exempt entity, AHLF does not pay property taxes and therefore generates no direct fiscal benefits to the City. Any secondary benefits of this facility, such as increased eco-tourism, have not been measured for this report.
- Remaining Parcels HUB Park and General Open Space: The remainder of the Site is assumed to remain as open space. Part of this area would include a passive trail system in the area designated as HUB Park by a longterm lease between the City and SDG&E. Though a trail system has not yet been constructed, RSG has assumed for this study that 1.2 miles of linear trails would be constructed by the City.

Assumed Build Out as Permitted by the Initiative

City staff prepared an extensive analysis of the land use policy implications of the Initiative and generally concluded that the Initiative does not clearly establish the disposition of existing uses that are not presently agricultural in nature. The Initiative proposes to narrow the permitted uses on site to so-called coastal agricultural uses, which would be a new land use designation in the City's General Plan. The entire 430.32-acre Site would be subject to this designation, notwithstanding existing land uses and constraints described earlier. No commercial, hotel, or park uses would be developed.

The Initiative is unclear as to the disposition of the 280.15 acres of constrained property in the Site, because no allowance has been made for the protection and/or maintenance of these existing uses.





FISCAL IMPACTS

RSG developed a forecast of initial and ongoing fiscal impacts of implementation of the Initiative, expressed in 2006 dollars. Our findings are presented below.

One-Time and Implementation Costs to City of Carlsbad

Implementation of the Initiative may cost the City between \$28.5 and \$36.5 million, exclusive of ongoing revenue losses to the City. The impacts include costs of modifying local codes and ordinances, site acquisition, development fee losses, acquisition and relocation of the Agua Hedionda Lagoon Foundation Discover Center, offset by a modest savings in recreational trail improvements proposed for the Site.

The table below summarizes the range of costs anticipated to implement the Initiative.

One-Time and Implementation Costs	Low Range Cost	High Range Cost
Update Local Codes and Ordinances	\$100,000	\$250,000
Acquisition of Parcel 1	8,400,000	9,900,000
Acquisition of Parcels 4, 10 & 11	6,200,000	6,200,000
Acquisition of Other Non-City Owned Parcels	6,400,000	12,800,000
Development Fee Losses	7,226,000	7,226,000
Acquisition & Relocation of AHLF Discovery Center	700,000	700,000
Savings on HUB Park Trail Improvements	(542,000)	(542,000)
TOTAL	\$ 28,484,000	\$ 36,534,000

These impacts are described below.

Updating Local Codes and Ordinances

If approved by the voters in November, City staff would be responsible for the costs for pursuing approval for the land use policy, LCP and zoning, changes from the California Coastal Commission. This would involve preparing and processing amendments to the General Plan, the Agua Hedionda Local Coastal Program (LCP), the Zoning Ordinance, the Carlsbad Ranch Specific Plan, and the Habitat Management Plan for Commission consideration. Because of several inconsistencies between the LCP and the proposed Initiative, the cost, time and likelihood that the necessary LCP amendments may be ultimately approved are uncertain. These efforts will involve staff time, legal services, and consultants. RSG estimates that the cost for these endeavors could range from \$100,000 to \$250,000, provided environmental review of these activities does not result in a significant level of mitigation costs borne by the City.

Acquisition Cost of TR Property (Parcel 1)

The Initiative takes away development rights from private property owners and narrowly restricts future use to agricultural. Today, RSG estimates that one would be permitted to develop approximately \$90 million of improvements on



City of Carlsbad

Parcel 1 under the current TR designation in the General Plan. This would effectively go away with the Initiative.

Given the potentially significant economic loss to a property owner between the existing and proposed land use designations, a property owner could file an inverse condemnation case against the City and force the City to acquire this parcel for fair market value. Even without such a claim, the only way for the City to guarantee that the property is used (not simply designated) for agricultural use may be to acquire the property at fair market value. Fair market value would likely be based upon the highest and best use of the property under the existing TR designation.

RSG is not an appraiser, and ultimately the opinion of value would come from a certified appraiser if the City pursued acquisition. For the purposes of estimating the fiscal impact to the City, RSG estimated the potential acquisition cost using a land residual analysis that computes the ultimate land value if the property had developed under either alternative. Based on this methodology (commonly used by appraisers to determine the value of vacant land), RSG believes the cost to acquire the property could be as much as \$9.9 million, or \$6.54 per square foot.

Acquisition of Carlsbad Ranch Co./SDG&E Golf Course Site (Parcels 4, 10, & 11)

The Carlsbad Ranch Specific Plan permits golf course uses as part of the open space designation on Parcels 4, 10, and 11. The Initiative would not permit such development, and it is conceivable that the City may need to purchase these parcels based on the assumption that they would have been developed for golf uses.

In general, golf course land is much less valuable than commercial land. Carlsbad Ranch Company recently was asking approximately \$2.00 per square foot for their portion of the site. Based on a residual analysis wherein we deducted the construction cost of the course from the total value of the project upon completion, RSG estimates the cost to acquire land would be closer to \$6.2 million for all three parcels, or \$1.62 per square foot.

Acquisition of Remaining Seven Parcels Not Owned by the City

Aside from Parcel 9 which is currently owned by the City of Carlsbad, all or portions of the remaining 292.95 acres of the Site may need to be acquired by the City under the same presumption that the loss of ultimate development rights could be construed to be a taking and the need to preserve agricultural uses in the Site may need to be accomplished by the City taking fee ownership.

In fact, there is some precedent to follow in the Flower Fields case. In its agreement with the City, the owner of the Flower Fields (Parcel 12), must provide the City the right of first offer if it desires to sell the property. A key difference between the existing Flower Fields agreement and the proposed Initiative is that the City has the discretion to modify the terms of the agreement and use presently. This flexibility is not provided in the Initiative, and could result in a claim that development rights may be lost if the Initiative is enacted.



Another factor in implementing the Initiative is that the City cannot legally condemn another public agency's property without its consent. Specifically, Parcel 5, located at the east end of the Site, is owned by the State Department of Fish and Game. The City cannot force Fish and Game to sell the 41.37-acre property, nor can it dictate how the Department can use their land. For this parcel, the City may not be able to implement the intent of the Initiative regardless of the costs to acquire the parcel.

Assuming the Department of Fish and Game would be a willing seller, and that the remaining site would be acquired at a cost equivalent to the value of Coastal Sage Scrub habitat or irrigated agricultural land, RSG estimated the cost of acquiring the 292.95 acres of land. Our assumed land acquisition cost would range from a low of \$0.50 per square foot for Coastal Sage Scrub habitat (which exists undisturbed in some areas of the Site), to a high of \$1.00 per square foot for agricultural land. Based on these assumptions, the cost to acquire the balance of the Site could range from \$6.4 million to \$12.8 million.

Foregone Development Fees

As detailed later in this report, implantation of the Initiative would prohibit development that would generate nearly \$6.9 million in fees to reimburse the City for completed infrastructure projects in the area. In addition, the City would also not receive \$350,000 in agricultural mitigation fees that could have been generated by the development of the Site.

Relocation of AHLF Discovery Center

The Initiative does not call for the preservation of the AHLF's Discovery Center, located on a 2.60-acre parcel owned by the Foundation. In 2003, the City provided a \$80,000 grant to the Foundation to complete the \$582,000 project. The land and the 3,500 square foot visitors' center were donated to the Foundation from Hillman Properties West Inc. in 1999.

It is not clear whether the Initiative would permit the Discovery Center as part of the Coastal Agricultural designation it proposes, as it is not part of any agricultural operation. Moreover, as the Initiative would move to shift the existing environmental conservation areas to agricultural use, it would be difficult to expect that AHLF would be amenable to continuing operating a visitors' center without any environmental assets.

Consequently, it is reasonable to assume that the transition of the Site to agricultural uses as proposed by the Initiative could result in a need to acquire the AHLF property and visitors' center and relocate the Foundation to a new location. While RSG has not investigated whether relocation is practical for the Foundation, we do estimate that the costs to undertake this endeavor would exceed the original cost of the facility and site. Conservatively, RSG estimates that acquisition and relocation expenses to the City may reach \$700,000.



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Savings in Development of Trails through HUB Park

The City's Park Development Manager reports that the City has planned on developing a 1.2 mile trail system through HUB Park. If this property were designated for agricultural use as a result of implementation of the Initiative, these improvements are presumably not needed. The cost of constructing 1.2 miles of trails and special transitions (stairways to the lagoon, for example) would cost approximately \$542,000, and the City could save this expense if the Initiative were approved.

Ongoing Net Fiscal Impact to City of Carlsbad

RSG determined that build out of the Site under the terms of the proposed Initiative could result in lower municipal revenues, little direct impact on municipal service costs, and potentially significant costs to maintain coastal agricultural operations on the Site.

The table below summarizes RSG's annual economic impact of this initiative, exclusive of one-time and implementation costs described earlier. We estimate the loss in potential revenue to the City and Redevelopment Agency could range from \$2.8 to \$3.0 million annually.

Annual Fiscal Impact of development at buildout	Without Hotel	With Hotel
City General Fund	\$ 2,098,000	\$ 2,215,000
Property Tax Revenue	66,000	67,000
Sales Tax Revenue	1,966,000	1,601,000
Transient Occupancy Tax Revenue	0	493,000
Business License Revenue	69,000	57,000
Less: Direct General Fund Expenditures	(3,000)	(3,000)
Less: Costs to Maintain Agricultural Operations	Unknown / Potentially Significant	
Redevelopment Commission	\$ 704,000	\$ 729,000
Net Housing & Nonhousing Tax Increment	704,000	729,000
Carlsbad Tourism BID	0	33,000
Assessment Revenue	0	33,000
TOTAL ALL FUNDS (ANNUALLY)	\$ 2,802,000	\$ 2,977,000

Property Taxes, Including Redevelopment Property Tax Increment

Based on the 2005-06 assessment roll and the City's share of the property taxes provided by the County Assessor and Auditor-Controller, RSG estimates that the City collected about \$6,400 in property tax revenue in 2005-06.

By prohibiting development of commercial and golf course uses anticipated for the Site, the Initiative would eliminate a much greater amount of property tax revenue to both the City, and the City's Redevelopment Agency, because Parcel 1 is located within the South Carlsbad Coastal Redevelopment Project Area, Using the development assumptions described in this report, RSG projected the



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City of Carlsbad

annual revenue loss to the City and Redevelopment Agency upon build out of these parcels. Without a hotel on Parcel 1, RSG estimates that the total property tax revenue to the City General Fund would equal approximately \$66,000 annually. With a hotel, this amount increases to \$67,000 annually. This amount consists of property tax revenues from the parcels outside the Redevelopment Project Area and the City General Fund's share of a statutory taxing agency payment for Parcel 1 from the Redevelopment Agency for the portion of the Site within the Redevelopment Project Area.

In proportion to the City's property taxes, the Redevelopment Agency could stand to lose a much greater amount of revenue because Parcel 1 is within the Redevelopment Project Area and virtually all development that occurs on the parcel would result in property tax increment revenue to the Redevelopment Agency. Without a hotel, RSG estimates that the Redevelopment Agency's tax increment revenue for affordable housing and non-housing projects would decrease by \$704,000 annually. With a hotel, the loss to the Redevelopment Agency would be approximately \$729,000.

Sales Taxes, Including Property Tax In-Lieu Revenue

At present, the Site does not generate any sales tax revenue. Without the prohibitions in the Initiative, development of retail uses would have been anticipated at Parcel 1. Carlsbad receives sales tax revenues 0.75 percent of taxable sales, plus a property tax in-lieu payment equal to another 0.25 percent of taxable sales. Once the states deficit reduction bonds are paid off in 2014, the property tax in-lieu payment would convert to sales tax revenue and the sales tax apportionment would equal 1.00 percent.

RSG estimated the amount of sales tax and property tax in-lieu revenues based on the assumption that development of Parcel 1 would likely yield several unique. destination retailers given the proximity to similar visitor serving retailers in the area, such as LEGOLAND California, Car Country Carlsbad, and the Carlsbad Premium Outlets. Depending on the specific retailer assumed to be at the project, taxable sales are estimated to range from \$195 to \$550 per square foot for this development.

Inclusive of property tax in-lieu revenues, the City could receive revenues from taxable sales totaling \$1,966,000 annually without a hotel component. With a hotel, RSG estimates that revenues from taxable sales could be reduced to \$1,601,000 due to the reduction in the square footage of retail space and a corresponding reduction in the amount of taxable sales.





Transient Occupancy Taxes

If a hotel were constructed on Parcel 1, the City would receive transient occupancy taxes equal to 10 percent of gross room revenue. The City's Economic Development/Real Estate Manager has received inquiries recently from hotel developers who have expressed interest in the Site, specifically for a 3-star hotel. The City's occupancy rate is quite high for this category of hotel product, so the demand for additional 3-star rooms appears to be supportable.

Accordingly, RSG estimated the annual amount of transient occupancy tax revenues for a 120-room, 3-star hotel. Based on a survey of comparable hotels nearby, we assumed an average room rate of \$150 per night and a 75 percent occupancy rate. This occupancy rate takes into consideration the demand for additional rooms and the standards sought by hotel investors.

Based on these assumptions, RSG estimates that a hotel on Parcel 1 could generate approximately \$493,000 annually.

Business License Fees

The City levies a business license fee equal to \$0.35 per \$1,000 of gross receipts. Gross receipts were based on taxable sales estimates described under Sales Taxes above. Without a hotel, RSG estimates that the City could receive approximately \$69,000 annually. With a hotel, business license fees could drop to \$57,000.

Tourism Business Improvement District Assessments

The Carlsbad Tourism Business Improvement District (BID) assessment fee was recently adopted in November 2005 to levy \$1 per room per night to fund programs to promote tourism in the City. If a hotel were constructed as permitted under the existing General Plan, the BID would experience an increase in assessment revenues to expand its programming. Based on the assumptions described earlier, a 120-room, 3-star hotel could generate BID revenues totaling approximately \$33,000 annually.

Savings in Operating Expenditures for the General Fund

Based on discussions with Police and Community Development Department staff, RSG has concluded that there would be little direct costs of providing municipal services to the Site upon build out under the current General Plan. With the exception of trail maintenance described in the next paragraph, the services provided to the Site would be similar to services already provided to adjacent uses, and staff does not foresee the need to add additional personnel, supplies or services to meet the needs of the Site at build out.

HUB Park was originally planned to contain approximately 1.2 miles of passive trails, so designating the use of this property to agricultural may relieve the City of the obligation to fund trail maintenance. According to the City's Park Development Manager, trail maintenance costs approximately \$2,750 per mile per year. RSG estimates an annual savings of trail maintenance costs of \$3,000.



Potential Ongoing Subsidies to Maintain Agricultural Operations

Cities in California manage agricultural resources through a series of planning initiatives to designate areas for agricultural use. However, based on RSG's research, consultations with planning staff, and discussions with the County Farm Bureau Manager, the Initiative's proposed maintenance of agricultural use is unprecedented, and poses a unique and potentially significant fiscal liability to the City in order to enforce the Initiative's intent.

The key difference is between designating land for a specific use, versus requiring that a particular use remain in operation. There are several factors outside of land use policy that create demand for the private sector to operate growing fields, including water supply, environmental mitigation, demand, and competition locally as well as internationally. The California Central Valley has experienced a dramatic shift in demand for agricultural uses as a result of these factors.

Presently, the most extensive enforcement power the City has over maintaining agricultural use relates to the bilateral agreement between the City and CB Ranch Enterprises to maintain operation of the Flower Fields on Parcel 12. However, the agreement does allow for the owner to sell the property and modify the terms of the agreement, and it cannot be concluded that the City would be forced under the terms of the agreement to continue operation of the Flower Fields.

The Initiative goes further than the Flower Fields agreement, by calling for a perpetual maintenance of agricultural uses, potentially in locations where such uses are not in operation currently. It is unclear what is to happen if the demand for strawberries, for instance, changes and the property owner is unable to find an operator willing to farm the Site. Potentially, the City ultimately could be responsible for subsidizing farmers to insulate them from factors affecting demand for growing fields in this area.

Because of the unparalleled scope of this Initiative and the lack of definition to where such uses could be applied, the amount of such subsidies are not predictable at this time, but could be significant. If the City takes ownership of the Site to enable the implementation of the Initiative, additional costs to the City may be involved, such as mitigation for runoff, liability insurance, property taxes, and other costs.

IMPACT ON FUNDING FOR INFRASTRUCTURE

The City funds infrastructure construction via a series of fee programs. By prohibiting development as planned and programmed into the City's fee program, the Initiative would remove these properties as a source of fee revenue. City staff has reported that the fees are reimbursing the City for existing improvements that have already been constructed, such as the bridge and thoroughfare at Cannon Road. Consequently, the loss of infrastructure revenue



would cause the City a funding shortfall that could not be recouped through a reduction in infrastructure improvements.

RSG consulted with City Engineering staff to estimate the potential infrastructure revenue loss that could be suffered if Parcel 1 and the golf course site (Parcels 4, 10 and 11) were not developed as envisioned under the current General Plan. Staff reports that the fee is not affected by the alternative of a hotel use on Parcel 1, so the estimates presented below are generally representative of the fee losses under both scenarios.

City Fee Estimates	Parcel 1 (Commercial Use)	Parcels 4, 10, & 11 (Golf Course)	Total
Infrastructure Fees	\$ 6,296,000	\$ 580,000	\$ 6,876,000
Drainage Area Fee	250,000	372,000	622,000
Sewer Fee	253,000	1,000	254,000
City Water Fee	43,000	120,000	163,000
Public Facilities Fee	1,051,000	0	1,051,000
Zone 13 Fee	185,000	1,000	186,000
Traffic Impact Fee	995,000	32,000	1,027,000
Bridge & Thoroughfare Fee	3,519,000	54,000	3,573,000
Other Fees	\$ 350,000	\$0	\$ 350,000
Agricultural Mitigation Fee	350,000	0	350,000
TOTAL ALL FEES	\$ 6,646,000	\$ 580,000	\$ 7,226,000

As shown above, implementation of the proposed Initiative could result in a \$6,876,000 loss of infrastructure fee revenue to the City. These fee losses may cause the City to seek other sources of financing this shortfall, including possibly an adjustment to the fee program to absorb these losses as other projects build out.

In addition, the City would lose \$350,000 of agricultural mitigation fees as a result of the property not converting to a non-agricultural use.

IMPACT ON THE COMMUNITY'S ABILITY TO ATTRACT AND RETAIN BUSINESS AND EMPLOYMENT

The Initiative would remove the potential of developing approximately 463,000 square feet of commercial uses on Parcel 1, which poses the most significant impact on the community's ability to attract and retain business and employment. The supply of commercial land along Interstate 5 is limited in North San Diego County, and this parcel is well suited to accommodate tourist-serving commercial uses to compliment similar uses nearby.





Based on application of conservative employee generation standards, RSG estimated the amount of businesses and employees that could have been accommodated by the development of 463,000 square feet of space. Industry generation standards dictate approximately 2 employees for every 1,000 square feet of commercial space, and 1 employee for every hotel room. Without a hotel, approximately 926 employees could have been employed by a non-hotel development on Parcel 1, and 902 employees could have been employed if the parcel contained a hotel.

IMPACT ON EXISTING BUSINESS DISTRICTS AND DEVELOPED AREAS DESIGNATED FOR REVITALIZATION

Impacts on Existing Business Districts

The Site does not contain any existing business districts, although there are several business park and commercial areas nearby. RSG does not anticipate any direct impacts on existing business districts.

Areas Designated for Revitalization

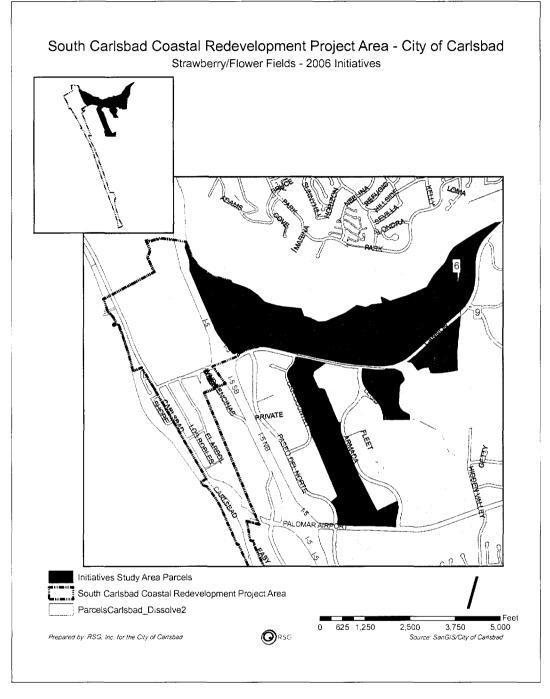
Parcel 1 lies within the South Carlsbad Coastal Redevelopment Project Area, and the removal of this site would result in the lost opportunity for tax increment revenue to be generated by the Tourism/Recreational Commercial uses that would be permitted if the Initiative is not enacted.

On July 18, 2000 the City Council adopted Ordinance No. NS-553 that established the Redevelopment Plan for the 555.5-acre South Carlsbad Redevelopment Project Area ("Redevelopment Project Area"). The Redevelopment Project Area is one of two such revitalization areas of the City, the other located in the downtown village area. The Redevelopment Plan authorizes the Carlsbad Redevelopment Agency ("Redevelopment Agency") to implement a 30-year revitalization program throughout the Project Area.

At the time of its adoption, the Redevelopment Project Area contains 43 parcels of property, the majority of which is located west of Interstate 5, along Carlsbad Boulevard. The only parcel of the Redevelopment Project Area located east of Interstate 5 is Parcel 1, which is also located within the proposed Initiative Site.

The map below presents the boundaries of the Redevelopment Project Area.





As part of the financial feasibility analysis contained in the Redevelopment Agency's Report to the City Council, the Redevelopment Agency included a forecast of tax increment revenues anticipated to be generated by the entire Redevelopment Project Area. The forecast took into consideration development of certain parcels of property within the Redevelopment Project Area, including construction of commercial uses on Parcel 1. As stated earlier in this report,





City of Carlsbad

RSG estimates that the Redevelopment Agency would not realize between \$704,000 and \$729,000 annually if the parcel is not developed.

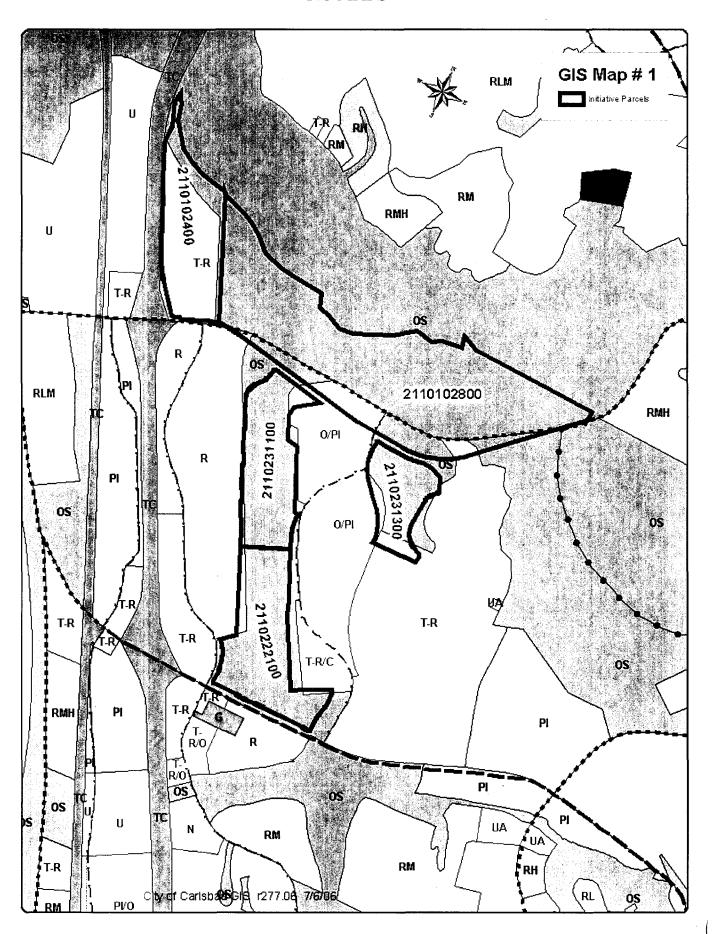
Removal of the development potential of Parcel 1 may adversely affect the Redevelopment Agency's ability to implement a comprehensive redevelopment program in the Project Area. In fiscal year 2004-05, the County Auditor-Controller reported that the Project Area generated approximately \$269,000 in revenue. Although this tax increment revenue generally increases with each year, the Project Area is not realizing the rate of growth anticipated when the Redevelopment Plan was adopted and the actual receipts are less than half what was projected for fiscal year 2004-05.

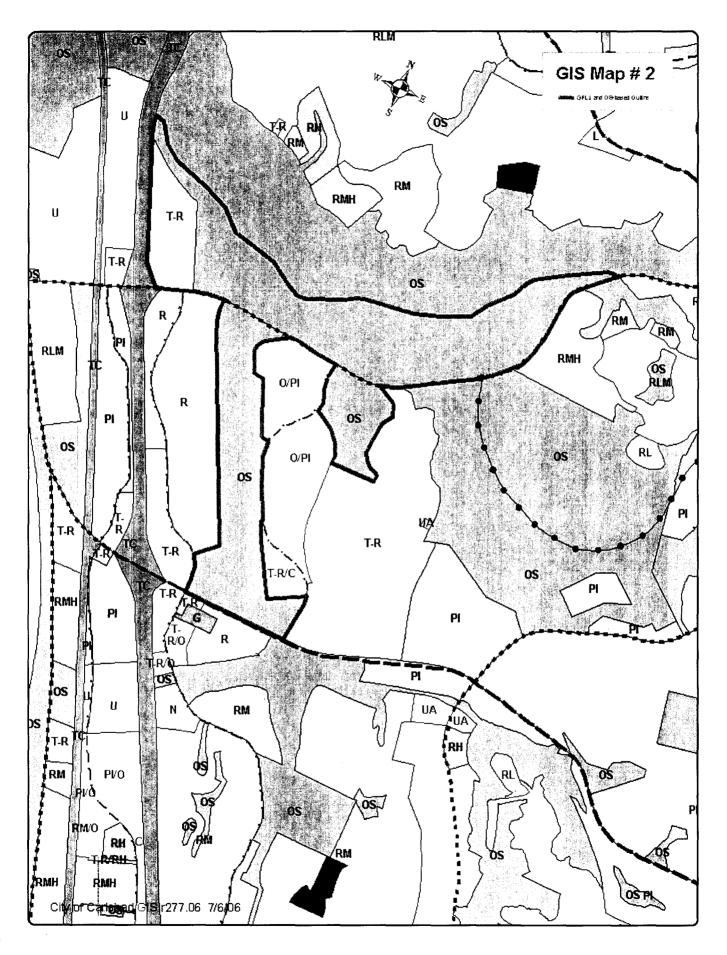
Consequently, the Redevelopment Agency needs to make significant program adjustments in light of the rate that revenue has been generated initially, without taking into consideration what may be the largest piece of undeveloped land within the Project Area. The further loss of tax increment revenue would not only further delay implementation of needed Project Area improvements (such as redevelopment of the Ponto area and improvements in the vicinity of the Encina Power Plant), but also slow the City's affordable housing production program. Of the \$704,000 of potentially lost tax increment revenue associated with Parcel 1 alone, approximately \$176,000 was to be deposited into the Redevelopment Agency's affordable housing fund. As a result, affordable housing projects both inside and outside the Project Area could also be adversely affected by implementation of the Initiative.

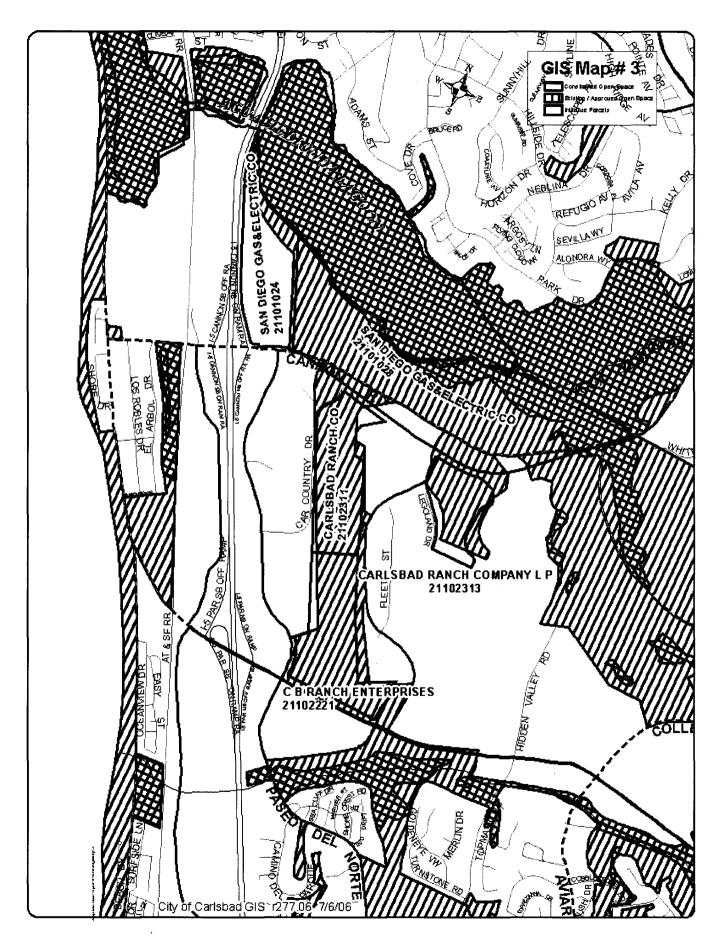


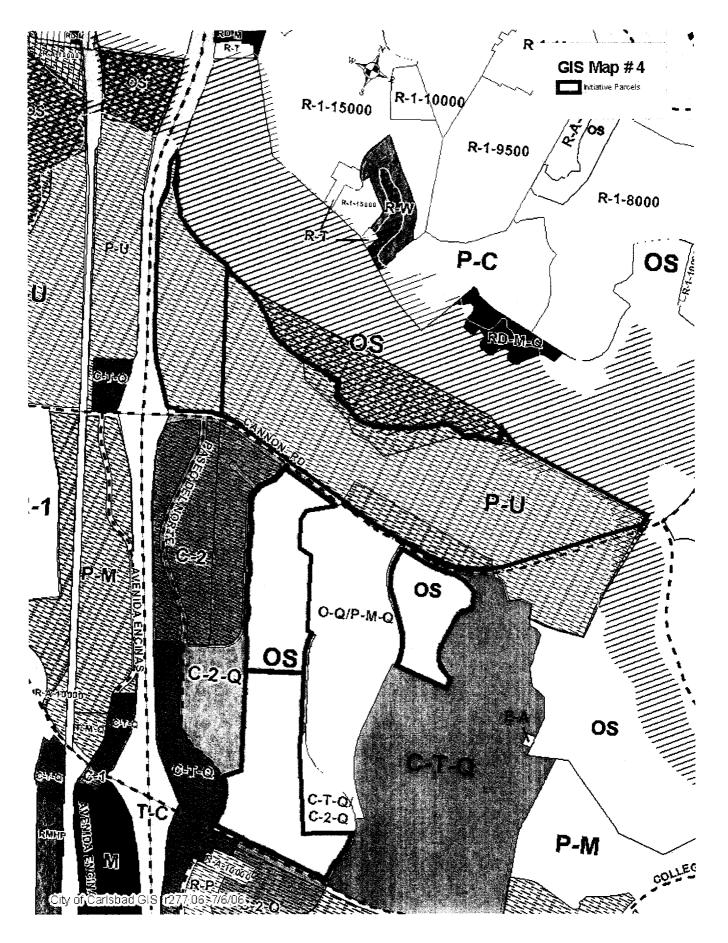
Attachment 3

ATTACHMENT THREE GIS MAPS









Attachment 4



AGUA HEDIONDA LAND USE PLAN

ADOPTED MAY, 1982

Kelly Ranch LCP Amendment July 11, 2000

Habitat Management Plan LCP Amendment August 8, 2003

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The lagoon provides for a wide range of water related uses, including aquaculture, boating, water skiing, fishing and wildlife habitat. The outer lagoon is used primarily for fishing, and provides cooling water for the SDG&E power facility. The middle lagoon is used for sailing and swimming. The western half of the inner lagoon is used for power boating and water skiing, while the eastern end of the lagoon contains environmentally sensitive wetland and habitat areas.

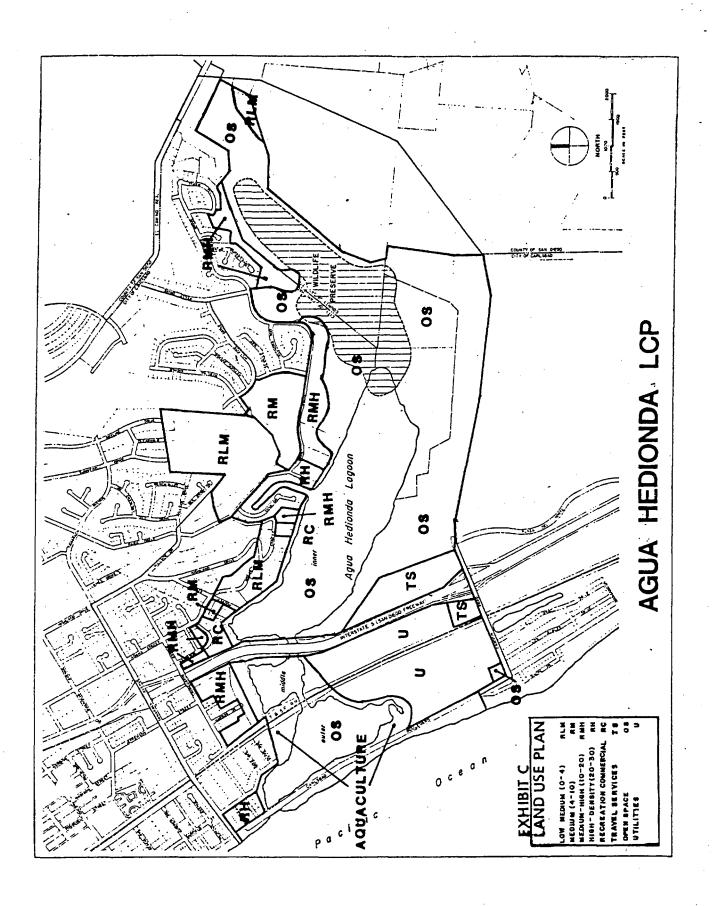
The land use categories and residential density ranges utilized in the land use map and policy statements are based on those contained in the Carlsbad General Plan. This provides for consistency between the Agua Hedionda Plan and the General Plan, and allows for eventual integration of the two documents. Zoning ordinances and designations will be developed in the implementation phase of the Agua Hedionda Land Use Plan.

The various densities of residential uses indicated on the map will be modified in actual practice by several considerations. Reservations of public access easements, preservation of defined view-corridors, and limitations on grading are all factors that will tend to reduce the potential yield of living units per acre. Projects within the areas designated RM, RMH, and RH which exceed the minimum guaranteed General Plan density will be subject to additional review by the City Council. The Council may allow up to the maximum General Plan density only if the necessary public facilities are available to serve the project, the higher density will not adversely impact the surrounding areas, and the development provides unique onsite amenities, public recreational opportunities, preserves/enhances unique geological environmental features, or provides affordable housing.

Land use designations, must be considered in conjunction with other sections of this plan. Certain parcels, because of unique environmental or ecological considerations, will be limited for development in some ways that are not applicable to other parcels having the same use designation. For the most part, these limitations, requiring a greater degree of creativity on the part of the land planner, can be an asset rather than a liability to the owner, since their purpose is to enhance desirable features of the land and the natural environment.

Policies

1.1 Land uses in the Agua Hedionda Plan area shall be consistent with those indicated on the Land Use Map (Exhibit C).



- b) As secondary uses, in the interim period while aquaculture alternatives are being studied, other uses may be permitted which would necessitate minimal site disturbance or capital investment, including active recreation (fishing, tent camping, etc.), beach access parking, short-term recreational vehicle parking, and temporary accessory commercial facilities (bait-and-tackle shop, food concession, etc.);
- c) All uses shall be regulated by conditional use permit. All proposed uses shall be conditioned to provide all access improvements required by this plan, and shall provide peripheral landscaping which at maturity will screen all objectionable improvements (i.e., aquaculture facility, outside storage, parking areas, etc.) as viewed from Carlsbad Boulevard.
- 1.9 Building height shall be limited to a maximum of 35 feet. Building setbacks and lot coverage shall be regulated by the applicable zoning designation, except as specifically modified in this plan.
- 1.10 The 45 acre parcel owned by SDG&E located on the south shore immediately east of the freeway shall be designated TS, Travel Services. Conversion of the property to commercial development shall be subject to a future specific plan and the applicable policies relating to agricultural conversion. A future specific plan will be required by the City for development of the property.

Discussion

Agriculture in the Agua Hedionda area is dependent upon a wide range of factors. The soil resource is not as ideal as that in other parts of the State but is well-suited to the existing agricultural operations. Climate is the major factor which has determined the success of the area's agriculture since it allows production during months when agriculture is precluded in competing areas. Water is a critical factor, and both direct and indirect energy costs contribute significantly to agricultural costs. Labor also represents a substantial proportion of costs; its future depends to a large extent on government policies toward undocumented aliens. Access to certain Carlsbad agricultural areas is difficult during certain times of the year. Improvement of access would involve a trade-off between production gains from better access and the potential for increased vandalism.

Agricultural activities in the plan area are limited to south shore properties. This area is contiguous with other large agricultural lands to the south and east.

Policies

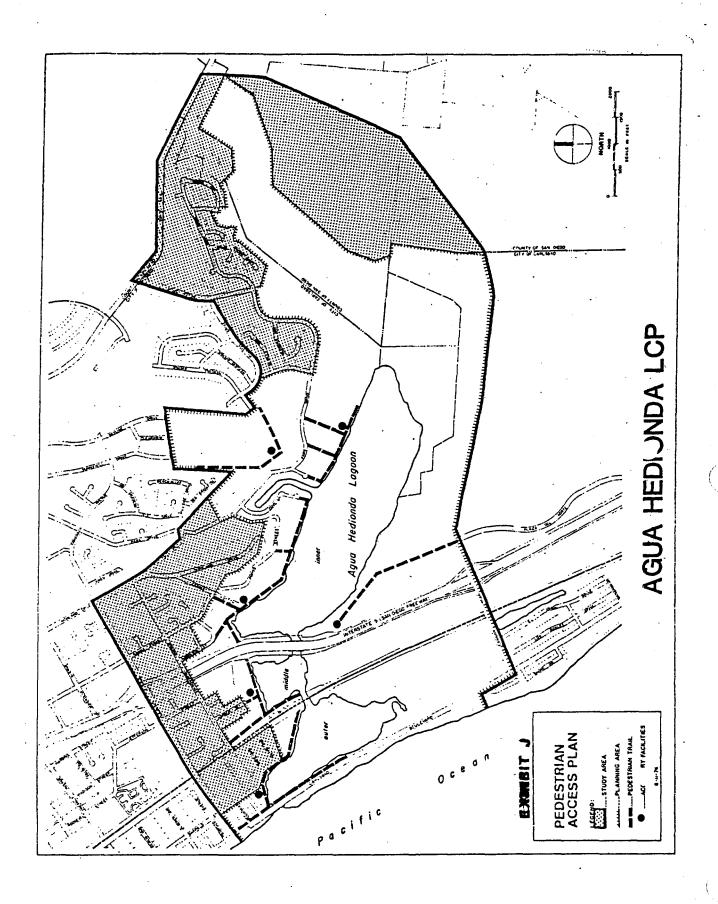
- 2.1 Conversion of agricultural property shall be consistent with Coastal Act policies, and the policies of this plan.
- 2.2 The south shore agricultural lands shall be designated "Open Space." This area shall be zoned "Exclusive Agriculture" in the implementation phase of the plan.
- 2.3 Conversion of the 45-acre SDG&E south shore property shall be subject to the following conditions:
 - a) Prior to development SDG&E shall record a permanent open space easement over the remaining agricultural lands in favor of the City of Carlsbad. Said easement shall limit uses to agriculture, utility right-of-way and maintenance, roadways, and recreation trails that do not interfere with agricultural operations.
 - b) SDG&E shall provide a written report demonstrating to the satisfaction of the City, that preservation of the site is not necessary to assure reasonable expansion opportunities for the Encina Power Plant in accordance with Coastal Act Section 30413(b), and that future expansion could reasonably be accommodated at the present power plant site. Said report shall be a requirement of a future specific development plan for the property.

- c) Prior to issuance of a permit for development of the parcel, the owner shall make a portion of the site available for development as a public recreational use if the City finds that current or future recreational needs require the development of such uses in the south shore portion of the Land Use Plan area.
- d) In the event that the Carlsbad Local Coastal Plan is amended to allow for a City-sponsored agricultural program, SDG&E may apply for inclusion in the amended program.

Major boating facilities include Snug Harbor and Whitey's Landing, both located on the north shore of the inner lagoon. All three lagoon areas provide passive activities such as walking, hiking, wildlife observation and informal viewpoints.

Policies

- 6.1 Whitey's Landing and Snug Harbor shall be designated for continued recreational-commercial use. Expansion of existing facilities at these locations shall be encouraged (Exhibit "B").
- 6.2 Construction of private docks, boat storage and launching facilities shall be subject to approval by the U.S. Army Corp of Engineers, the State Department of Fish and Game, the City of Carlsbad and the California Coastal Commission, consistent with Coastal Act Policies.
- 6.3 The SDG&E agricultural conversion property adjacent to the I-5 freeway, shall be designated Travel Services. This will allow for 45 acres of additional visitor-serving commercial uses.
- 6.4 If demand for boating/launching facilities cannot be accommodated by existing development, and it can be demonstrated that the lagoon will not be adversely affected by additional boating access and is consistent with Coastal Act Policies, the City should develop public or joint public/private boat facilities in the area of Hoover Street.
- 6.5 The Encina fishing area on the outer lagoon should be maintained as a public activity area.
- 6.6 If boating activities on the inner lagoon reach such a high level of use that public safety is endangered or the lagoon ecosystem is being adversely impacted, the City may act to restrict maximum carrying capacity, reduce maximum speeds and limit the horse-power of boats.
- 6.7 The present recreational uses of the lagoon shall be maintained and where feasible, expanded.



Attachment 5

ATTACHMENT FIVE

SPECIAL LEGAL COUNSEL RESPONSES

TO S.D.G. & E. QUESTIONS OF THE

CITIZENS' COMMITTEE

Question 1:

Both Proposition A (Strawberry Fields Initiative) and Proposition C (City-sponsored Initiative) appear to have been proposed as a reaction to a specific planned development of the Encina Property, certain elements of which would have protected critical open space areas, increased public access to open space and created public parkland. It has been suggested that one of the underlying motives of Proposition A is to eliminate development options for the Encina Property and, consequently, put the development agenda of an alleged financial contributor to Proposition A in a more favorable position. How does the City intend to demonstrate that Proposition A and Proposition C do not unfairly target Encina Property and are not enacted with the improper motive for defeating the development of the Encina Property, and thus are not arbitrary and discriminatory enactments in excess of the City's police power.

Answer: The question relates to the motives of the backers of the Strawberry Fields Initiative. Normally, the motives of a Legislator cannot be used to invalidate a legislative enactment. Normally, legislation can only be found invalid based on the actual language of the enactment, not the motivating factors behind its adoption. While there are cases and situations where improper motives have invalidated legislation, we are not aware of a case or circumstance where a City is required to investigate the motivations behind an Initiative supporter.

Question 2:

Both Proposition A and Proposition C cite, as one of their main objectives, the preservation of open space within the City and, in particular, coastal agriculture. However, any development of the Encina Property would also protect critical open space areas, increase public access to open space and create public parkland. The development of Encina Property might also provide affordable housing, which the California Legislature has declared to be of statewide importance. How does the City intend to demonstrate that the use restrictions contained in both Proposition A and Proposition C, and in particular, the coastal agriculture use restrictions, are rationally related to the general public welfare? How does the City intend to demonstrate that such use restrictions promote the general public welfare, rather than merely the interests of certain individuals and adjacent property owners, and thus are not arbitrary and discriminatory enactments in excess of the City's police power?

Answer: The question deals with the impact of the Initiatives of the City's regional "fair share" housing requirements. Currently, none of the parcels are zoned for housing development. The City's housing obligation is not limited to one parcel or group of parcels as stated above, the State Legislature may impose housing laws which may affect parcels covered by these Initiatives, but have not done so at this time.

Question 3:

As stated above, both Proposition A and Proposition C cite the preservation of open space and coastal agriculture as one of their goals. However, the character of the property surrounding the Encina Property is overwhelmingly commercial and residential. Both Proposition A and Proposition C would single out the Encina Property for uses inconsistent with the surrounding area, creating an isolated area that will become an island in a sea of less restrictive uses. How does the City intend to demonstrate that the use restrictions contained in both Proposition A and Proposition C do not constitute oppressive and invalid spot zoning, granting to SDG&E fewer rights than the owners of surrounding property and requiring SDG&E to use its property for uses inconsistent with the area?

Answer: The issue of "spot zoning" relates to the improper adoption of a zoning restriction that only targets a small area of the community for arbitrary treatment not applied to neighboring parcels. For the most part, this argument would depend on a variety of factors. One factor that argues against "spot zoning" is the fact that the parcels were already subject to the "agricultural" and "open-space" zoning called for in the Strawberry Fields and City Initiatives. The difference is the permanency of the restrictions, not their initial application. Spot zoning may be a problem in the future as the rest of the City develops, but it is not a serious legal concern at this time, considering the existing rules.

Question 4:

Proposition C states that the purpose of the Initiative is to ensure that the Encina Property is "preserved in open space and that farming is allowed to continue as long as it is viable" and would expressly prohibit any residential, commercial or industrial development of the Encina Property. However, Proposition C would permit the construction of civic buildings on the Encina Property. How does the City intend to disprove the inference that one of the underlying objectives of Proposition C is to depress the fair market value of the Encina Property by prohibiting its improvement or development, thereby allowing he City to acquire land at a reduced price for the development of its civic buildings, and that Proposition C is not being enacted for an improper legislative motive?

Answer: The argument being made is that the two Initiatives amount to unreasonable pre-condemnation conduct. (Klopping v City of Whittier (1972) 8 Cal.3d 39). A City cannot use its zoning power to depress the price of property prior to condemning it. Evidence of improper pre-condemnation conduct could result in damages against the City for trying to acquire property at less than the fair market value. This office is not aware of any such conduct.

Ouestion 5:

One of the main objectives of both Proposition A and Proposition C appears to be the restriction of the use of the Encina Property to the growth of strawberries, as evidenced by the consistent use of the term "Strawberry Fields" throughout both propositions. SDG&E notes that the term "Strawberry Fields" is a misnomer, since the majority of the 257 acres that comprise the Encina Property is not used for the production of strawberries. In any case, no studies or analyses have been conducted, and no evidence has been presented, that strawberry production is vital to the public health, safety or general welfare of the region, especially given the vastly different character of the surrounding area. How does the City intend to demonstrate that the continuation of strawberry production bears a substantial and rational relationship to the regional public welfare, and thus such a restriction is not an arbitrary and unreasonable enactment in excess of the City's police power?

Answer: The question is more of a political or policy question related to the appropriate land use for the parcels subject to the two Initiative Measures.

Question 6:

As stated above, both Proposition A and Proposition C would restrict the use of the Encina Property to open space, and in particular, coastal agriculture. While much of the Encina Property is already designated as open space in the General Plan, a 45 acre portion of the Encina Property is designated as travel/recreational. Both Proposition A and Proposition C would change the designation of this portion to open space, despite previous assurances that Proposition C would maintain the current General Plan designations of the Encina Property. However, it is unlikely that agricultural uses of the Encina Property will continue to be economically viable, especially given the vastly different character of the surrounding areas. Furthermore, the costs associated with the continued maintenance and preservation of the Agua Hedionda Lagoon, such as the cost of stormwater prevention programs, far outweigh the revenues generated under Proposition A or Proposition C. Accordingly, Proposition A and Proposition C, if enacted, would deprive SDG&E of substantially all reasonable and economically viable use of the Encina Property. How does the City intend to demonstrate that the enactment of Proposition A or Proposition C would not constitute and unconstitutional taking, and that Proposition A and Proposition C are not subject to invalidation? Alternatively, how does the City intend to compensate SDG&E for the taking of the Encina Property that will occur if Proposition A or Proposition C is enacted? If proposition A or Proposition C is enacted, who will pay the costs associated with the continued maintenance and preservation of the Agua Hedionda Lagoon?

Answer: The question assumes several facts that lead to the conclusion that a "taking" will occur if the Strawberry Fields or City Initiatives are adopted. The discussion above and the discussion at the meeting of June 15th cover the standards applicable to the scenario raised. The utility company would have to seek a change in land use with a meaningful application presented before the City. The Council would have to determine if a "taking" would occur, given the facts that are presented at the public hearing.



Question 7:

It does not appear that the City has previously announced or promoted any comprehensive plan of preserving coastal agriculture in the region. Rather, as stated above, it appears that Proposition A and Proposition C were proposed as a reaction to specific planned development of the Encina Property. How does the City intend to demonstrate that Proposition A and Proposition C do not single out the Encina Property for unduly harsh treatment, but apply to an entire area, and produce a fair and equitable distribution of the burdens imposed by each of them? More generally, how does the City intend to demonstrate that the severe economic impact imposed by Proposition A and Proposition C on the Encina property is fair in light of the arguably narrow public benefit accruing from them?

Answer: This question attempts to point out an unfair burden placed on the subject properties to preserve agricultural lands. The premise of the question states that the City has no plan for agriculture. However, as pointed out in Section A(2) above, the City's General Plan recognizes the continued existence of agricultural uses on these parcels. The difference the two Initiatives have with the current policy is making these restrictions permanent. Since Courts are usually deferential to the public policy choices of cities, the question will still probably come down to a "takings" analysis.

Question 8:

The Encina Property is currently zoned "Public Utility" and is used for public utility purposes, which are governed by the California Public Utilities Commission (CPUC). The City may not regulate matters over which the CPUC has been granted jurisdiction, and any City laws, statutes, codes, ordinances, rules or regulations purporting to do so are preempted by the CPUC. Neither Proposition A nor Proposition C takes into account the current public utility uses of the Encina Property. While Section 3.10 of Proposition A refers to continued use of SDG&E's transmission corridor, SDG&E owns all of the Encina Property, and the City may not restrict the use of the Encina Property for public utility purposes. How does the City intend to amend Proposition A and Proposition C to acknowledge these essential public utility functions? Is the City aware that the restrictions contained in Proposition A and Proposition C, as applied to public utility functions, are preempted by the CPUC?

Answer: This question relates to the discussion above of the preeminent authority of the Public Utility Commission over public entities. As discussed in Section B above, the City's laws, including those imposed by Initiative cannot preempt state law. (Committee of Seven Thousand v. City of Irvine (1988) 45 Cal.3d 491). To the extent that actual restrictions in the two Initiatives conflict with a specific PUC General Order, law or regulation, those portions of the applicable Initiative Measure would be invalid.

Question 9: SDG& E is a public utility, and any costs of any restrictions placed on the Encina Property by Proposition A or Proposition C, or any litigation regarding them, must be borne by SDG&E's ratepayers. For instance, the costs associated with the continued maintenance and preservation of the Agua Hedionda Lagoon, such as the cost of stormwater prevention programs, far outweigh the revenues generated by any

agricultural lease of the Encina Property or any other use permitted under Proposition A or Proposition C. How does the City justify imposing the disproportionate burden of this cost on SDG&E's ratepayers? How does the City justify the probable impact of such restrictions and/or litigation on the provision of essential public utilities to the public?

Answer: This argument discusses the public policy argument that the Initiatives create an unreasonable burden on public utility ratepayers. This argument is essentially a policy argument and not a legal argument.

Question 10: This question focuses on two specific sections in the Strawberry Fields Initiative, Sections 3.4 and 3.14, which do not amend the General Plan, but require the City Council to make amendments in the future to be consistent with the Initiative Measure. The language in the Initiative Measure creates several situations in which the Council must amend language in the General Plan, Zoning Code and specific plans for the City. The Initiative redefines "Coastal Agriculture" and eliminates the General Plan policy, found in various Elements, by eliminating the transition to a more urbanized landscape. Under Section 3, No. 4 requires that the Vision, Introduction, Land Use, Open Space and Conservation Elements be amended in an unspecified manner to adopt the following policy:

Eliminate the presumption that agricultural policies are intended to support the agricultural activities while planning for possible future transition to more urban uses and instead establishes coastal agriculture in the vicinity of Agua Hedionda Lagoon and its connection Flower Fields as preserving special conservation Initiatives as continued coastal agricultural production.

This section is typical of the substantive provisions of the Initiative. It mandates that various elements of the General Plan be amended without specific language being targeted or referenced. This act of amending the General Plan in various undefined locations will also require the City Council to amend inconsistent zoning ordinances, specific plans and other City policies including the Local Coastal Plan's land use plan.

This method of amendment raises questions as to whether or not the Initiative unlawfully controls future legislative acts (*Marblehead v. City of San Clemente* (1991) 226 Cal. App.3d 1504). In *Marblehead*, a land use Initiative was invalidated for directing the City Council to amend various portions of a general plan and zoning ordinance to comply with the general concepts in the Initiative.

Since the *Marblehead* decision, a San Diego County case was decided which deals with language that amended a general plan with direction to amend certain sections of the County's plans and policies (*Pala Band of Mission Indians v. Board of Supervisors* (1997) 54 Cal. App. 4th 565). In the *Pala* case, the Initiative amended various portions of the general plan and directed the County to "make all necessary amendments to ordinances, rules, and regulations, General Plan, sub-regional and community plans, and the Zoning Ordinance." (*Pala Band of Mission Indians v. Board of Supervisors*, at p.572).

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In upholding the Initiative, the Fourth District Court of Appeals addressed the requirement that the Board of Supervisors amend certain laws to comply with Initiative as follows:

Sections 7C and 7D merely tell the County to enact any necessary amendments to ensure the General Plan amendment will take place. Such enabling legislation promotes, rather than violates, the requirement that a General Plan reflect an integrated and consistent document. Further, on this record, there is no basis to believe that any amendment to the General Plan would be necessary since there is no evidence Proposition C creates an inconsistency in the plan. (54 Cal. App. 4th at p. 577).

Here the Initiative Measure requires future legislative steps to be taken. The Initiative amends three separate elements of the General Plan that primarily deal with land use issues. It also changes the vision of the City's General Plan.

The Marblehead and Pala cases seem to conflict. In Marblehead, one distinction was that the City Council was directed to make the changes proposed by the Initiative. The San Clemente Initiative (Marblehead) did not specifically state that the General Plan was amended by the Initiative. It directed the City Council to take that step. In the Pala case, the Initiative did state that it was amending the General Plan, but went on to direct further amendments of the General Plan and lesser policies and laws. This distinction is one of degree and this Initiative seems to fit closer to the Pala model. The Strawberry Fields Initiative contains directives to the City Council to enact new laws consistent with a general policy direction. Here the City Council is required to take a number of steps to prevent this Initiative from violating certain legal requirements. Those steps would be necessary to implement the Initiative and if the Pala model were followed, the Initiative would not illegally bind future City Councils.